

**A TWO LEVEL SOCIOLOGICAL  
INSTITUTIONALIST CRITIQUE OF MIGRANT  
WORKERS PROTECTION: A STATE AND  
REGIONAL ANALYSIS OF INDONESIA AND  
THE PHILIPPINES**

**ANISA SANTOSO**

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## **ABSTRACT**

This thesis examines the causes behind the slow progress of ASEAN (Association of Southeast Asian Nations) in coming up with a regional policy framework for the protection of migrant workers. I argue in this thesis that normative structures within the association and its relevant member countries do not sufficiently support the establishment of such protection policy for migrant workers at the regional level. The research puzzle is tested by taking a case study that is looking at ASEAN's major workers sending countries, Indonesia and the Philippines. At the regional level the case study includes analysis on the institution of ASEAN and the ILO as well as Malaysia as the region's main workers receiving country. I analyse this puzzle by using two level games approach and complementing the approach with the analytical framework of sociological institutionalism. Two level games approach has previously offered explanations on how domestic level politics can influence regional policy negotiations to the extent that they constrain policy makers and disturb the policy process. I utilise this analytical framework by combining it with sociological institutionalism which allows further analysis into the substance of previously mentioned constraints and how these constraints are administered. The analysis reveals that supportive ideas to migrant workers protection within the domestic institutions of Indonesia and the Philippines are not equipped with sufficient strength to overcome contradicting ideas at the regional level. Identities and discourses between societal and governmental institutions in both countries lack consolidation on the form and substance of workers protection. This subsequently constrains policy makers' actions in a regional policy formulation involving institutions at the regional level whose ideas on workers protection are contradictory. What I have also uncovered is that, although identities in ASEAN support workers protection, ASEAN's main discourses of non-interference and consensus impede the establishment of a coherent workers protection policy.

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## **ABBREVIATIONS**

<b>AEC</b>	<b>ASEAN Economic Community</b>
<b>AEM</b>	<b>ASEAN Economic Ministers</b>
<b>AICHR</b>	<b>ASEAN Intergovernmental Commission on Human Rights</b>
<b>AFTA</b>	<b>ASEAN Free Trade Area</b>
<b>AKAN</b>	<b>Antarkerja Antarnegara- Interwork Interstate</b>
<b>ALMM</b>	<b>ASEAN Labour Minister Meetings</b>
<b>AMM</b>	<b>ASEAN Ministerial Meetings</b>
<b>APJATI</b>	<b>Asosiasi Perusahaan Jasa Tenaga Kerja Indonesia-Association of Indonesian Workers Service Corporations</b>
<b>APSC</b>	<b>ASEAN Politic and Security Community</b>
<b>ASEA</b>	<b>Association of Southeast Asia</b>
<b>ASEAN</b>	<b>Association of Southeast Asian Nations</b>
<b>BES</b>	<b>Bureau of Employment Service</b>
<b>BKPTKI</b>	<b>Badan Koordinasi Penempatan Tenaga Kerja Indonesia- Coordinating Body for the Placement of Indonesian Workers</b>
<b>BNP2TKI</b>	<b>Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia - The Indonesian National Board for the Placement and Protection of Migrant Workers</b>
<b>CARAM</b>	<b>Coordination of Action Research on AIDS and Mobility</b>
<b>CIMW</b>	<b>Centre for Indonesian Migrant Workers</b>
<b>CMA</b>	<b>Centre for Migrant Advocacy</b>
<b>CRA</b>	<b>Client Referral Assistance</b>

DEPLU	Departemen Luar Negeri-Department of Foreign Affairs
DFA	Department of Foreign Affairs
DMT	Department of Manpower and Transmigration
DOLE	Department of Labour and Employment
EU	European Union
GBHN	Garis-garis Besar Haluan Negara- Indonesian Guidelines of State Policies
GMFD	Global Forum on Migration and Development
HRWG	Human Rights Watch Group
HSPA	Hawaii Sugar Planters Association
ILO	International Labour Organisation
ILO	International Labour Office
IMA	International Migrants Alliance
IMFID	International NGO Forum for Indonesian Development
IOM	International Organisation for Migration
IPD	Institute of Popular Democracy
Jamsostek	Jaminan Sosial Tenaga Kerja-Workers Social Insurance
Kontras	Komisi Untuk Orang Hilang dan Korban Tindak Kekerasan- the Commission for the Disappeared and Victims of Violence
KOPBUMI	Konsorsium Pembela Buruh Migran Indonesia- Consortium for Indonesian Migrant Workers' Advocacy
LIPI	Lembaga Ilmu Pengetahuan Indonesia- the Indonesian Institute for Sciences
LoI	Letter of Intent
Maphilindo	Malaya Philippines Indonesia
MERCOSUR	Mercado Comun del Sur- Southern Common Market

<b>MFMW</b>	<b>Mission for Filipino Migrant Workers</b>
<b>MOU</b>	<b>Memorandum of Understanding</b>
<b>MW</b>	<b>Migrant Workers</b>
<b>NCCP</b>	<b>National Council of Churches in the Philippines</b>
<b>NGO</b>	<b>Non Governmental Organisation</b>
<b>NSB</b>	<b>National Seamen Board</b>
<b>OEDB</b>	<b>Overseas Employment Development Board</b>
<b>OFW</b>	<b>Overseas Filipino Workers</b>
<b>OUMWA</b>	<b>Office of the Undersecretary for Migrant Workers Affairs</b>
<b>OWWA</b>	<b>Overseas Workers Welfare Abroad</b>
<b>PDI-P</b>	<b>Partai Demokrasi Indonesia Perjuangan-The Indonesian Democratic Struggle Party</b>
<b>PDOS</b>	<b>Pre-Deployment Orientation Seminars</b>
<b>PhilRights</b>	<b>Philippines Human Rights Information Centre</b>
<b>PJTKI</b>	<b>Perusahaan Jasa Tenaga Kerja Indonesia- Indonesian Workers Service Corporation</b>
<b>POEA</b>	<b>Philippines Overseas Employment Agency</b>
<b>POLO</b>	<b>Philippines Overseas Labour Office</b>
<b>PRP</b>	<b>Persatuan Rakyat Pekerja- Association of Working People</b>
<b>SEA</b>	<b>Single European Act</b>
<b>SEATO</b>	<b>Southeast Asian Treaty Organisation</b>
<b>SEOM</b>	<b>Senior Economic Officials Meetings</b>
<b>SOM</b>	<b>Senior Officials Meetings</b>

SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia-The Malaysian National Commission for Human Rights
TAC	Treaty of Amity and Cooperation
TEU	Treaty of European Union
TKI	Tenaga Kerja Indonesia-Indonesian Workers
UN	United Nations
US	United States
VAP	Vientiane Action Programme
Welfund	Welfare Fund
ZOPFAN	Zone of Peace, Freedom and Neutrality

# **CHAPTER I**

## **INTRODUCTION**

ASEAN has been active in formulating integrative policies in areas of free market and economy. Despite this particular fact, policy integration in social areas showed considerably less progress. This is evident in the formulation of migrant workers protection policy. Although ASEAN member countries currently have around 13.5 million workers all over the world and five million within the Southeast Asian region (Mathi 2008), no actual protection policy for these workers have been established. Indonesia and the Philippines, being the region's biggest workers sending countries, have initiated the formulation of an ASEAN level migrant workers protection policy. Both governments hold special importance in the association, particularly Indonesia, as one of the main initiator of the association. In 1998 ASEAN members have agreed to start cooperating towards the formulation of a regional migrant workers protection policy within the Hanoi Plan. Despite this development, both Indonesian and Filipino efforts to push forward policy proposals towards a regional protection policy for migrant workers remains unable to create significant progress in the establishment of protection policy in ASEAN. This is the puzzle that the thesis seeks to investigate.

Despite interests in research on ASEAN policy making, little has been done to investigate why a more coherent regulation to protect migrant workers has not been established in the region. This thesis seeks to address the concern by investigating how the idea of workers protection is institutionalised at the regional and national level. The thesis



works with the assumption that regional level policies are determined by national level institutions. This assumption informs the thesis that problems in formulating migrant workers protection policy at the regional association level of ASEAN have their roots from the domestic political dynamics of individual members. Particularly in this case the dynamics of institutionalisation of migrant workers protection in ASEAN's key workers sending countries whose citizens constitute the migrant workers that need protection when working abroad. The aim of this thesis is to see whether the degree of institutionalisation of supportive values to migrant workers protection in ASEAN's major workers sending countries, Indonesia and the Philippines, are sufficient to encourage the formulation of a coherent working ASEAN regional policy framework for the protection of migrant workers.

This chapter functions as an introduction to the thesis whereby the main claims and findings are outlined. The chapter consists of six sections. In the first section the research questions guiding the enquiry are outlined. The second section presents the importance of the research conducted in this thesis by giving an overview on existing research in the area. The third section highlights considerations of available mainstream approaches to the conduct of international relations which led to the choice of approach in this thesis. The fourth section displays the main arguments of the research. The fifth section provides the research design and methodology of the thesis and finally the sixth section outlines the organisation of the research.

## **I.1. Research Questions**

ASEAN carries significant importance in this case for its structure and characteristics of multilateral cooperation with various institutions dealing with a wide array of issues, including migrant workers. On paper, ASEAN has the necessary institutional and political

bases to form a working regional framework on migrant workers policy, and the means to maintain it. This is why it will be interesting to examine why it has not been able to do so and try to define the causes of the phenomenon.

Major sending countries like Indonesia and the Philippines between 2000 until 2008 have altogether supplied 20 Million workers in Southeast Asia (Mathi 2008). This amount accounts for as much as ten percent of all workers in ASEAN (International Labour Organisation 2008). Although these workers provide benefits for receiving and sending countries in particular, mistreatments are often experienced by these workers. Many of these cases also involve indecent working conditions, illegal holding of passports and arrests which followed mistreatments on migrant workers and forced deportations (International NGO Forum for Indonesian Development INFID 2008). In the long term these issues will not only disturb the industrial process where workers are involved in but also create political tensions between receiving and sending countries and halt overall ASEAN integration.

Since its creation in 1967, ASEAN member countries only managed to put together an agreement on the protection of migrant workers rights in 2007, whilst the European Union (EU) and MERCOSUR quickly catered for the need of policy in the area. Aside from recognising migrating workers as an important part of integration (European Union 2002),<sup>1</sup> the EU covered social economic rights of these workers within The Treaty of Paris in 1951 and the 1957 Treaty of Rome. In 1989 this was followed by the adoption of the Community Charter on the Social Rights of Workers which further laid down social rights to be covered in the European labour market (The European Parliament 2000, : article 39,48). This was strengthened with the Treaty of Amsterdam in 1997 and the establishment of the European

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<sup>1</sup>Treaty establishing the European Community (Nice consolidated version) - Part Three: Community policies - Title III: Free movement of persons, services and capital - Chapter 1: Workers - Article 39 - Article 48 - EC Treaty (Maastricht consolidated version) - Article 48 - EEC Treaty. It was stated that freedom of movements of workers is secured within the community and this would include abolition of any discrimination against workers from taking up employment between nationalities.

Social Fund. Also essential to this development was the inclusion of social rights protection clauses in the Treaty of European Union (TEU)(The European Parliament 2000, : protocol 14). Despite the economic, social and political disparities of its members (much like ASEAN) MERCOSUR's policies have extensively promoted migrant workers protection clauses through the members' Ministers of Labour. MERCOSUR's social clauses and Labour Declaration has been integrated with clauses from the 1990 ILO Convention on the Protection of Migrant Workers and their Families, as well as sufficiently equipped with region-wide labour inspection and support towards members social safety net application (International Labour Office 2001). As a forum of communication with trade unions, national administrators and employers representatives a Permanent Multilateral Commission (Duina 2006, 174-176) was also established. While this Commission protects social rights of migrant workers, their political rights are ensured by the MERCOSUR Commission of Social and Labour or *Comision Sociolaboral del Mercosur*, created under Resolution 12/2000 on the rights of workers to strike and form unions (Duina 2006, 177). More on this matter can be seen in the empirical discussion of this thesis, particularly within Chapter IV.

Scholars of Southeast Asian politics have rarely looked into why similar development has not occurred in ASEAN. Previous researches have focused mainly on either regional level or national level policy processes. More on these researches is further elaborated in the second section of Chapter II. Regional level researches focus on the ASEAN way and the unstable nature of ASEAN institutions (Francis 2006), suggesting that for policies such as immigration ASEAN integration remains weak (Kawai 2005, 24-27), or that national interest still prevails (Dash 2008, 11-12; Webber 2003). Although some scholars suggest the continuing importance of the regional level to solve regional issues (Mattli 1999, 27-28), regional level researches suffer from over concentration on regional processes without further analysing the dynamics and channels of interaction for national interests.

This thesis seeks to address this particular gap in the research. Migrant workers policy is essentially a matter of both regional and national interests. As it is a foreign policy at a regional level it lies within the domain of regional politics, while at the same time due to its concern of social policy include some level of individual members domestic politics. From this it is clear that the research questions guiding the enquiry need to bear in mind dynamic policy interactions between the state and regional level actors within the framework of regional institution. In this thesis the underlying research question shall be **why has ASEAN not been able to institutionalise a coherent regional policy framework for the protection of migrant workers?** In order to answer this question the working enquiry shall be equipped with a domestic dimension of the case. In doing so the next research question asks **why Indonesia and the Philippines have been unable to institutionalise a coherent regional policy framework for the protection of migrant workers.**

The case of Indonesia and the Philippines are chosen here because of their large number of migrant workers in the region and their keenness to pursue migrant workers protection in the region. A closer look at institutionalisation processes within these two countries will provide an insight on the strength of their influence and national interests in affecting policy making at the ASEAN level. The examination of this particular issue will be important not only to studies of regional policy processes, but also its interaction with the dynamics of domestic politics and international politics in general. By examining why certain countries act the way they do in regional cooperation, I aim to be able to shed light on to the question of state policy behaviour in a regional context.

## **I.2. Significance of Research on the Making of Migrant Workers Protection Policy**

Literature on the making of Southeast Asian migrant workers protection policy is considerably rare for the area of study. Despite this fact, literature on bilateral relations and regulations on migrant workers are increasingly common. Even so, prominent studies on these subjects are hardly in touch with the social policy side of events (Hughes 1988; Yeoh, Huang, and Gonzales III 1999; Piper 2004). Graeme Hugo, for example, has produced extensive analyses about historical aspects on policies of Southeast Asian migration, in particular between Indonesia and Malaysia. In his historical analysis of the trends and policies between the two countries, Hugo revealed that the form of policies available to regulate workers movement from colonial times have long been concentrated on managing placement and supplies (Hugo 1993, 2002). For many scholars this is mainly how migration is perceived, and consequently how it is managed by states. Another view supposes migrant workers as a threat to security as depicted by the works of Amarjit Kaur, where workers migration is largely perceived as a violation to states territorial integrity. In some of her studies on Singapore and Malaysia Kaur explains the tendency of state governments to act on the phenomenon as they would on security threats against their borders (Kaur 2006, : chapter 3). Kaur's study on Singapore and Malaysia Kaur supports Hugo's arguments that state governments remain focused on managing supplies of workers destination countries (Kaur 2007).

These few scholarly works suggest that bilaterally state governments have hardly touched upon social aspects of workers migration and the need to regulate the protection of such aspect. Both Kaur's and Kassim's analysis (Kassim 1987) suggest a traditional liberal economic approach in looking at migrant workers issues which still views the matter through the investigation of migration's push and pull factors. Although as similarly focused on the

slow working of protection policies as Hugo's historical account, these few studies present the tendencies of researches around the issue where bilateral agreements are hardly connected at all to the dynamics of social policy making (Kaur 2006, 2007). Kassim's work in this case presents the most concern in how bilaterally states need to respond to migrant workers issue as a social problem (Kassim 1987, 3-5). Her analysis reveals potential social issues arising from settling migrant workers, particularly from Indonesia to Malaysia, despite their cultural similarities (Kassim 1987, 3-4). Although this particular work is considerably lacking in causal analysis, Kassim's survey represents the growing need to focus on societal issues surrounding workers migration in Southeast Asia. Although the studies mentioned here are especially focused on bilateral connection and regulation on migrant workers they depict the common tendency of analysing the issue. This means that there is still a need for thorough societal analysis with reference to an area based research on the protection of migrant workers, and the mechanism of its policy making.

### **1.2.1. The Many Facets of Migrant Workers Protection in Southeast Asia**

Moving from previous studies on bilateral policies on migrant workers some scholars have worked on issues surrounding the idea of workers protection in the region as a social policy. Because of its many facets of issues, researches on the specific case have been focused on many concerns from gender issues, human rights to labour rights. Some have also talked about the organisation of societal actors involved in the protection of migrant workers and their significance to the three previous concerns. Despite this, little has been done to specify their focus on the policy making of workers protection at the regional level.

On gender issues most studies on migrant workers protection exclaim not only unequal treatments from employee and national governments, but also insensitivity from these parties

over the different needs and conditions of female workers. Foreign female workers are especially vulnerable due to not only their weaker physical traits but also as their common employment in industries where cheap labour with low skilled is preferred (Safa 1981, 418-424). Peter Stalker remarks that compared to their male counterparts female workers are also most likely to face discrimination, exploitation and abuse (Stalker 2008, 11). Under these circumstances concerns about their welfare and protection become less of a priority (Safa 1981, 420). On the other hand Southeast Asian workers migration has become more feminised in recent years (Piper 2003, 726-728), with no real recognition and protection towards their welfare needs (Piper 2003, 728-731, 740-742). Asis, Huang and Yeoh also note that this predicament is compounded with additional problems relating to disturbed familial relationships that occur when women workers left their families and children to work abroad (Asis, Huang, and Yeoh 2004, 198-210). The question of how to protect workers and their families as well as whose responsibility it is to protect them became emphasised in this case. Issues relating to gender sensitivity in particular escalate as it is suggested that such a precarious condition of female workers worsens only due to bureaucrats and state leaders' insensitivity (Piper 2004, 224).

Studies that have touched upon Southeast Asian migrant workers issues from the perspective of human and labour rights also relate to the works of societal groups and denote once again the question of responsibility to protect. Existing academic works relating human rights dimension of migrant workers issues revolve around the lack of access to social security mechanisms for foreign workers abroad (Sabayes-Wheeler and Koetl 2010). Another concern of this is reflected in scholarly works focused on how far migrant rights should be regulated under human rights clauses (Battistella 1993). The issue concerning whose responsibility it is to protect migrant workers appropriately coincides with working human rights measures. The existence of working human rights recognition in a nation-state largely

depicts how state governments see their position with regards to protection policy. What research on this subject tells us is that there still exists the belief that societal problems of migrant workers are for societal groups to deal with. This is particularly true within the findings of Michelle Ford in her studies on government's role in protecting the human rights of workers, especially the Indonesian government (Ford 2005, 9-11). National governments would be reluctant to recognise these problems as it would mean recognising that they themselves violate human rights (Battistella 1993, 198-199). Additionally it is considered that state governments are not always able to break away from their habits. Amy Gurowitz acknowledges in her work that governments tend to have incremental responses of managing workers as an economic factor, which makes their regulation mainly involves supply and distribution (Gurowitz 2000). Jenina Joy Chavez has equally discussed this incrementalism with regards to appropriate responses to human rights issues. Chavez suggests that the example of such a notion in Southeast Asia is embodied within state governments reluctance to ratify the UN Convention on the Rights of Migrant Workers and their Families (Chavez 2007, 359,371; Piper 2004). For the ASEAN level Chavez suggests that a working regulatory mechanism for migrant workers protection needs the consideration of both governmental and societal actors (Chavez 2007, 371-374).

From what has been suggested within the list of issues earlier the question of “how” to formulate a working protection policy for migrant workers relates closely to the question of “who” should protect migrant workers. The common fact recognised by scholars is that migrant workers protection policy in Southeast Asia and in ASEAN is needed and remains a difficult task to achieve. The question of “how” and “who” subsequently becomes more intricate when it is posed on the regional level of ASEAN. Although there has been many studies touching upon the subject of the protection of migrant workers, particularly in Southeast Asia, notions of the making of government foreign policies to ensure it have not



been sufficiently explored. Although some have mentioned the subject, Chavez's work has specifically been one that solely explored the possibility of a foreign social policy at the ASEAN level (Chavez 2007). Even on this particularity the work has been mainly descriptive rather than analytical to the extent that it provides a framework to shed light on the problem surrounding foreign social policy making.

The major concern for researches on ASEAN and Southeast Asian migrant workers protection has been revolving around the reinstatement of state governments responsibility and their reluctance in coming up with a working policy. Although this has been done, not many have taken into the quest of finding the cause of states reluctance. Little has been done to explore governments' condition on both regional policy making context as well as a foreign social policy environment that may have contributed to the root of the cause. This redefines the importance of the conduct to research the case in this thesis. The research will not only shed new light on the behaviour of institutions within a specific policy environment but also presents great significance for the area of study and for further development of foreign policy analysis in particular and International Relations in general.

### **I.3. Considerations of Available Approaches**

Literature on ASEAN as an institution itself has expanded to a vast collection throughout the years, as the studies of regions evolved further with the revival of regionalism in the 1980s (de Melo and Panagariya 1993; Mittelman 1994; Hettne, Inotai, and Sunkel 1999).<sup>2</sup> Despite this abundance of accounts on ASEAN regionalism and its policy making implications, theory-focused researches have been particularly rare to find, especially those

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<sup>2</sup> Regionalism in a wider scope spreads through three waves. The first wave occurred in the 1930s as a move towards protectionist territorial based autarkies. According to Hettne the wave starts in the 1940s to 1970s when regionalism is seen as a strategy towards security, peace, development and welfare. The focus on the whole project in this era is on free trade and customs union.

focusing specifically on migrant workers policy in the region, and examining interactions between the national and the regional level in determining this policy.

The analytical glasses of traditional international relations theories such as realism and liberalism has not offered much to shed light to the case, as well as constructivism that surfaced more recently. Realism suggests the explanation that it is the national interest which is responsible for any government actions and policies (Rosenau 1995; Morgenthau 1978). This assumption does not concur with the fact that the Indonesian and Filipino governments are unable to push forward for a coherent migrant workers policy in ASEAN, although it may be consistent with their national interest of securing its citizens and economic benefits. Realism is more concerned with the survival of the state as opposed to the welfare of its citizens (Waltz 1979, :117-119). Realists distrust in cooperation (Donnelly 2005, 44) also makes the approach misleading if utilised in the context of ASEAN. Liberals offer wider recognition of policy influences from non state societal realm that could affect policy making (Donnelly 2005, 45-46). Despite this liberalism in itself does not offer sufficient nor specific tools to analyse a policy making anomaly. Liberal ideas about cooperation and state-society relations (Barry and Keith 1999, 6-7) may give insight into what may have caused the issue in this research, but a micro analysis into how preferences and interactions are played out in the event of policy making remains necessary and missing from this approach. Some strains of liberalism such as neo-functionalism have also put good efforts in the analysis into the integration project by introducing the *spillover* effect (Mattli 1999, 25-26). Useful in explaining integrative movements in MERCOSUR (Pelares 2003)<sup>3</sup> and the EU (Rieger

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<sup>3</sup> MERCOSUR's dependence on domestic interest vested intergovernmental bargains made the policies behind a preferential trade agreement based economic integration easy to penetrate other areas in the individual government policy making and ultimately created greater integration in other policy areas.

2005),<sup>4</sup> neo-functionalism is unable to explain the reality in ASEAN where integration in the security and political areas (Ruland 2000) is not followed with *spillover* in social policies such as migrant workers protection. Constructivism on the other hand provides an in-depth sociological approach to the norms and value structure that affects individual and governmental actions (Reus-Smit 2005, 196). This could be useful to analyse policy making in the regional context as a base of explanation for the logics that determine government's actions. Even so, constructivist's logic of consequences and appropriateness does not explain Indonesia and the Philippines's position in the process of migrant workers policy making in ASEAN. In addition, constructivist argument of social construction and over-emphasis on the system (Checkel 1998, 339-341, 347-348) causes neglect on the effect of state and bilateral level to regional policy making. Explaining ASEAN as a "social construct" (Katzenstein 1996, 23, 416) may help to an extent but can allow too many loopholes in analysing policy processes. Some notes on these approaches are discussed in more detail within Chapter II and III of this thesis.

The application of these theoretical frameworks is unsatisfactory when used to reveal the answer to the research question. Although all three provide valuable insights into the analytical structure of the appropriate tool for this research, more needs to be done to formulate a satisfactory framework for the case. In order for the research question to be answered correctly both ASEAN level and member countries policy making in the process need to be considered. Member countries policy making at the level of ASEAN needs to be considered as influenced by their position and interactions with parties at the regional level. To fully incorporate these elements the research will utilise a two level analysis with the aid of a further institutionalist approach to uncover the institutionalisation processes involved.

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<sup>4</sup> In the EU, the integration of agricultural policies brought by the CAP (Common Agricultural Policy) with its complexities involving the welfare, employment and trade sectors of European economy pressured policies in other neighbouring areas to be integrated as well.

#### **I.4. Central Argument**

I argue first of all that the case in this thesis needs an approach that examines the dynamics and dilemma of foreign policy making under constant conflicting domestic and international pressures to help seek the answer to this question. Previous analytical approaches on various forms of domestic factor influence at the international levels have been explored earlier (Rosenau 1969; Moravcsik 1994; Waltz 2001; Gourevitch 1978). In recent years actual tools of analysis to extract the dilemma of foreign social policy making has not been widely developed. How foreign social policy making is conducted under simultaneous domestic and international pressures in particular has also not been elaborated further. The aim of the research in this thesis is therefore to develop a new alternative framework of policy analysis, able to fill the gaps provided by existing frameworks.

Robert Putnam's two level games approach provides this particular starting point. Putnam clearly laid out two levels in which this foreign policy "game" is played. The first level here represents the international table where policy makers negotiate with foreign counterparts towards a decision, and the second level involves the discussions over the tentative agreement made in the international level with domestic constituents before they can ratify the agreement (Putnam 1988, 435-436). From this starting point the thesis investigates the institutionalisation of actors at these two levels through the use of institutionalism with a sociological dimension. A sociological institutionalist analysis on actors within these two levels will pinpoint where and how in the two levels weak or incoherent institutionalisation of migrant workers protection lie. More on these tools of analysis can be seen in Chapter II and their operationalisation in Chapter III.

Secondly in answering the research question and informed by considerations of approaches I argue here that ASEAN has not been able to come up with a coherent regional

policy framework for the protection of migrant workers because there are problems within the institutionalisation process of migrant workers protection. These problems happen as state actors, in this case Indonesia and the Philippines, receive two level pressures from processes of institutionalisation at the regional and domestic level. Incoherent institutionalisation of migrant workers rights and the importance of regional regulation to protect them from both the international and domestic level institutions render the countries pressure at the ASEAN level shaky. This makes the overall institutionalisation process for a migrant workers protection policy at the ASEAN level hard to achieve.

A migrant worker here is defined as someone who works in a country but is not a citizen of that country or according to the UN Convention for the Protection of the Rights of All Migrant Workers and Members of their Families is “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” (International Labour Organisation 1990, 2: Part I, Article 2) The significance of investigating the case in this thesis lies within three major components; theoretical, empirical and methodological.

Theoretically this investigation is important as it reveals why known bases of national governments actions such as national interests, facilities, capabilities as well as consequences and appropriateness may not be sufficient to support a government to take on specific foreign policy acts. The research seeks to examine other mechanisms within the policy making process that may have the same if not more influence to government’s policy decisions on the regional institutional level. This is the analytical gap that this research hopes to fill theoretically and empirically to further develop this study. It also means that there is more within the policy making process that needs to be investigated.

Empirically this research is significant for the development of International Relations in general and Asia and specifically Southeast Asia studies. Despite the lengthy presence of the issue, there has been little research done on migrant workers protection policy making in ASEAN. The regional association itself has gone through numerous international and internal conflict as well as economic crises and despite the developing status of its members has intriguingly managed survival. Despite growing importance in the international world, ASEAN in itself is a relatively rare subject to research in the field of regional policy making, particularly on foreign social policy. A considerably small amount of literature has discussed specifically how foreign policy is created and established in ASEAN in the past decade. Previous published studies on the matter tend to discuss the association's foreign policy making in terms of its ASEAN Way (Nischalke 2000; Johnston 1999; Ramcharan 2000), within the framework of regionalism (Anwar 1994; Ruland 2000; Jones 2004; Bowles and MacLean 1996), or their implications to other regions (Ruland 2001; Sudo 1992; Webber 2003; Jones and Smith 2007; Stubbs 2002). Specific analysis concerned with social policy making in ASEAN have only been seen in the investigation by Chavez in 2007 (Chavez 2007). This makes the thesis a work of research that does not only contribute more ideas in the making of ASEAN foreign social policy but also policy making in a regional grouping of developing countries. Additionally this makes the research in this thesis valuable for the development of regionalism studies in general.

Methodologically, the study entailed in this thesis provides an extensive framework that can be used as an alternative consideration to previously known frameworks on similar issues of foreign policy, social policy making and migrant workers policy in particular. On another matter, the method utilised in this case is aimed at bringing new light onto the traditional method of foreign policy analysis as well as exploration of cases in the area of policy making.

In short, the scientific contributions of this thesis are as follows; (1) theoretically the thesis facilitate further explorations to other components of policy making process in the regional institution level; (2) empirically this thesis enriches not only the study of Southeast Asia as a region, and ASEAN as a regional policy making institution but also foreign social policy making within the context of developing countries; (3) methodologically the thesis provides a novel approach towards the analysis of policy making processes which can be made as further considerations for researchers in the future. Conclusively the research conducted in this thesis presents significant contributions to the overall study of Politics and International Relations.

## **1.5. Methodology**

The goal of this research lies in two categories; empirical and theoretical. The empirical goal is sought to be tackled through examinations of the causes of the phenomena. This goal will be achieved by investigating institutionalisation from not only the regional level, but also two national levels with regards to their interaction with one another. The theoretical goal of this research will be addressed through the development of integration of the two level games approach with sociological institutionalism in an effort to widen theoretical options for the studies of international politics.

Relating to the goal of the research, a qualitative method is chosen for the research. This method is chosen particularly as it allows for a more extensive exploration to these issues (see Cresswell and Plano Clark 2007, :Chapter 2; Patton 1987). The way that the qualitative method permits an inductive approach to conceptually analyse findings and observations offers more flexibility than quantitative or mixed methods (Bryman 2004). This will be significant to adequately extract the causes of the case in this research and give new

insights that otherwise may not have appeared in the initial assumptions or hypotheses. Although some quantitative data will be discussed in this research, its variables and analysis will not be quantifiable, thus, the qualitative method will be the most suitable.

The research is conducted by way of taking the case study of the Indonesian and Philippine government approaches regarding a regional level migrant workers policy to show how two level pressures experienced by these governments both internally and externally play an important part in influencing government behaviour. A study on the Philippines case is conducted as it possesses a similarity of context and background with the case of Indonesia and may reveal other insights about migrant workers policy, particularly in comparison with Indonesia. Case study method is chosen here to demonstrate how the mechanism in the case applies and to examine and possibly reveal new insights by way of describing, understanding and explaining, that are the three major tenets of the qualitative method (Yin 1989, 33). The analysis in this thesis will be conducted utilising document investigating and textual analysis of official documents, publications and statements of policy from relevant institutions. An examination of discursive indicators towards a particular policy tendency will be entailed within the analysis from which a trend will be inferred to answer the research question.

It needs to be stressed that the discussions of migrant workers in this thesis include all types of workers who are working away from the country they originate. This includes documented, undocumented, domestic, formal and informal workers. Although some discussions may be included on one or more types of workers mentioned, this thesis does not focus on any particular type of workers. As migrant workers issues frequently relate to workers in a domestic household and that Indonesia in particular has supplied the majority of domestic workers in Southeast Asia, the discussions on Indonesia may have a tendency to include more aspects of domestic workers' plight. Despite this fact, it is not intentional. The



thesis intends to focus on issues in the policy making processes and not yet on the details of the substance of such policy.

The resources employed in this research include materials from primary and secondary sources. The differences between these two methods can be found in the way data is generated and extracted. Primary sources data are those that I collected directly myself from my own first-hand experiences (Kothari 2004; Rubin and Babbie 2010) whereas secondary sources in this case refer to data that have been extracted from another source or from the work of other people (Allan and Skinner 1991; Blaikie 2000; Bryman and Bell 2007).

From these definitions, data I extract from secondary sources include some literature research and analysis on a wide array of subject from historical accounts to the actions of institutions in Indonesia and the Philippines in ASEAN. Besides conducting research on literatures on the actions of Indonesia and the Philippines towards ASEAN's migrant workers policy, I have also included a document analysis on various legal and official papers in order to understand the significance of the issue for Indonesia, the Philippines and ASEAN itself.

Other methods of data extraction in this research also include a series of interviews. The data extracted in these interviews are categorised as primary sources. This is because I was present and directly compiled the data as a part of my research. Although some utilisation of the interviews in this thesis may suggest the use of respondents' viewpoint as a secondary source to gauge other actor's positions, the nature of the data generation is primary. The method of interview provides many interpretations to its substance (Fontana and Frey 1998), involving subjective human interactions (Benney and Hughes 1956). Because of its growing complexity it can suggest different contexts and as will be seen in the empirical section of this thesis, may be interpreted as a secondary analysis. However, as the researcher in question, I, have not only been involved in the interviews, but conducted the

interview myself, the data cannot be categorised as a secondary source (see Bryman and Bell 2007; Lewis-Beck, Bryman, and Liao 2004). A secondary source would involve the analysis of data from an existing data or information that has been provided for access by another separate individual or researcher (see Friesen 2010; Rubin and Babbie 2010). This again reconfirms how, despite the suggestions they may provide, the interviews in this are primary sources.

For this research I have conducted twenty-eight unstructured interviews in Indonesia and the Philippines as well as through the media of Skype and email conversations. The choice of the method of unstructured interview was chosen in order to extract as much in-depth textual data from sources as possible. Although the application of this method allows possible diversion and occasional loss of focus this method is best to gauge not only what perception these actors have but also how they perceive the case in the research (Fontana and Frey 1998). When such diversion and loss of focus occurred during interviews I directed interviewees to the main subjects of interest. For these interviews I had the agreement for direct quotes, despite the fact that depending on utilisation not all interviews will be quoted directly in this thesis.

Interviews have been carried out with officials from the ASEAN Secretariat, the Indonesian Foreign Ministry, the Indonesian Board for the Placement and Protection of Migrant Workers (BNP2TKI), the Department of Manpower and societal institutions within the country who had been relevant in lobbying for the protection of migrant workers. For the case of the Philippines interviews have also been conducted with officials of governmental institutions responsible for decision making on migrant workers such as the Department of Foreign Affairs, the Department of Labour and Employment and bodies which govern their welfare such as the Overseas Workers Welfare Administration. Research on the position of societal and governmental institutions in pursuing a better protection policy for migrant

workers from the Philippines is also presented. The interviews seek to confirm the position and attitudes of ASEAN in the face of the Indonesian and Filipino government towards proposing a regional policy framework on migrant workers and contribute insights into the background reasoning for these attitudes.

Interviews with migrant workers NGOs, academics and members of interest groups in the ASEAN regional level, Indonesia and the Philippines that had dealt with the issue have been conducted to explore discursive tendencies of expected behaviour from one another. Here I have posed questions to interviewees about what they think of the opinion of governments and ASEAN officials on the similar subject matter. By gauging this, I arrive at the inference to review how migrant workers protection policy is perceived by decision makers which further informs the institutionalisation of supportive normative structures to migrant workers protection. The thesis also investigates possible critical actors valuable in their role in putting two level pressures on the Indonesian and Filipino government, such as Malaysia and international organisations such as the ILO. Interviewees are chosen based on their involvement, knowledge and/or activity surrounding Indonesian and Filipino migrant workers policy issues in ASEAN, whether regionally or domestically.

## **I.6. The Organisation of the Research**

The chapters division in this research is aimed to provide readers a structure which facilitates better understanding of the subject topic. The organisation of the chapters has been devised to assist the breakdown of discussion into four sections that will gradually develop into a concluding chapter.

In the introduction to Chapter I a general explanation on the background of the issue is presented. Here ASEAN, its regional migrant workers issue and the relevant member countries in focus will be identified. The underlying problems concerning the regional regulation of migrant workers protection are defined within the main and defining research question. A discussion on methodology and the central argument of the research are also included in this chapter.

After the introductory chapter, the body of the research commences with a theoretical section. This section includes a chapter of literature review and a theory chapter. The chapter of literature review presents a review of previous literary works dedicated to the area of study, whether empirically or theoretically, giving more concentration on the theoretical endeavours. This chapter aims to review prior research and explore the analytical gap in the research area that the thesis in particular tries to fill. These discussions can be seen in Chapter II. This is followed with a theoretical chapter whereby the conclusion of the literature review is elaborated in a choice of analytical framework for the empirical data. This theory chapter provides an insight on how I sought to tackle the issue embedded within the research question. It also sheds light on the theoretical contribution and significance of this research to the wider study of international relations. The aim of this chapter is to provide the thesis with a workable theoretical framework that can sufficiently guide the enquiry in achieving a satisfactory answer to the research question. This theory chapter constitutes Chapter III in the thesis.

The next section of the research will include the empirical section of the thesis. This section consists of three chapters that embody a review and analysis of findings. The first chapter presents a case description and review of findings at the regional level of the case. This involves discussions on ASEAN and other regional level actors relevant to the issue of migrant workers protection such as Malaysia and the ILO. Some discussion and comparison

of other regional groupings and how or why they have handled similar issues will be included. A review of actors' policy positions and discursive tendencies towards migrant workers protection at the regional level will be in the centre of this chapter. This in turn will be Chapter IV of the thesis. The following chapter provides a detailed conversation on the domestic level of Indonesia. This chapter discusses the institutional tendencies of governmental and societal institutions at the national level of Indonesia with regards to the protection of workers. This can be seen in Chapter V of the thesis. The final chapter of the empirical section deals with the issue at the national level of the Philippines. This chapter includes reviews on similar institutional tendencies of the governmental and societal institutions in the country with the addition of a comparative outlook to the Indonesian case. In this chapter I seek to investigate whether similar trends occur in the Philippines as in Indonesia and examine why. This discussion constitutes Chapter VI of the thesis. Also included in these chapters are the analysis of findings of the field research on ASEAN's progress on migrant workers policy and both the roles of Filipino and Indonesian actions.

Following the empirical section a conclusion chapter wraps up the thesis. This chapter provides a short analysis to the case description and findings and proceeds to deduct the analysis into a conclusion. This chapter aims to outline the result of testing the thesis' proposed arguments with the reality of the empirical data. From this I will highlight important findings and conclude on the thesis with the consideration of the working research question. This conclusion section is what makes up Chapter VII.

## **CHAPTER II**

### **CONSIDERATIONS ON POSSIBLE FRAMEWORKS OF APPROACHES**

#### **Introduction**

The aim of the research in this thesis is to develop an alternative policy analysis that would be able to provide satisfactory framework to explain the case and other existing cases with similar characteristics. In this sense the thesis will not focus too much in explaining the causes of policies more than developing better ways and frameworks to analyse policies. This particular development of framework is what this chapter is especially focused on achieving. Scholars have expressed interests on the case and different aspects within ASEAN's foreign policy making from a variety of spectrums within political theory. In this chapter I will firstly present a review of existing literature on analytical frameworks surrounding the making of foreign policy in general and in connection with regional interaction in particular. This discussion leads to the second section which further considers other approaches that allow analysis on domestic-international interactions of foreign policy particularly the two level games. Thirdly, a literature review on possible new theoretical approaches that can provide the appropriate analytical framework for the case is also be included. This last section also presents further exploration on the best possible approach for the case in this thesis.

## **II.1. Theoretical Considerations**

The question for this part of the literature review resides with the need to theoretically analyse the focus of the research. In order to answer the research question and address the policy conundrum surrounding migrant workers protection a working analytical framework is needed. It is clear that from the elaboration in previous chapter that the issue that the thesis is dealing with a problem within the development of a policy that is both foreign and social in nature. What this thesis consequently has to formulate in this section is an analytical framework that will be able to conduct the appropriate policy analysis to the case.

How does one satisfactorily analyse this particular issue of foreign social policy within the discipline of international relations? Firstly, in this section I include a review of major analytical considerations on the study of foreign policy. Secondly, a discussion on scholarly works that look at how foreign policy processes are conducted under the influence of interactions between domestic and international dynamics is also added. In the final section I reassess how foreign policy where domestic international interaction is played out within a framework of regional institutions before concluding on the choice of framework to utilise in the thesis. The main goal that I intend to arrive at here is the most satisfactory analytical framework that allows considerations for all characteristics of foreign policy in the case and develops a novel policy analysis tool.

### **II.1.1. Considerations on the Study of Foreign Policy Analysis**

As noted in the introduction, both traditional international relations approach of realism and liberalism in their original framework do little in providing a satisfactory analytical framework for the case. Realism is over-simplistically state-centred on national interests

(Meyers 2000; Morgenthau 1978) and denied further exploration into socio-cultural dimensions of migrant workers protection issues in a regional institution (Donnelly 2005, 44). Liberalism gives valuable insights into the influence of societal actors in foreign policy (Moravcsik 1997), but does not offer a specific tool of analysis to decipher foreign policy behaviour of states in a regional context.

In order to see what form of foreign policy ASEAN needs to achieve in order to sufficiently protect migrant workers the research consults previous scholarly works on the logic of foreign policy making. Elaboration on the empirical foreign policy area has been limited, especially on the regional level of cooperation. In their review of research conducted on issues of labour migration in Asia, Maruja M. B. Asis and Nicola Piper both pointed out that the studies on domestic-international connections and their impacts on workers migration in Asia still needs further investigation (Asis and Piper 2008, 18). This is an anomaly as Piper explains how within a regional (or international) negotiation to regulate social protection of workers government's domestic politics are interfered (Piper 2004). This suggests that state governments and parties involved put significant interests into the matter, making it a widely appealing area of research. Reflectively, ASEAN as an international party also plays the role of ensuring a successful implementation by helping to enforce policy implementation to its members (Wishnie 2002, 557). Therefore both domestic and international level actors interact in ensuring workers rights are assured.

Judging from the characteristics and the type of regulation it needs to provide the regional policy to protect migrant workers here refers to a regional level foreign social policy. This in turn implies that migrant workers protection policy can force ASEAN member states into a dilemmatic position. Foreign policy by its definition refers to a matter of governments' international politics, while social policy on the other hand is a matter of domestic politics. Foreign social policy therefore presents a dilemma for national leaders as it would mean that



its domestic politics has had to be considered within a context of the international environment and vice versa. This particular dilemma covers the essence of the puzzle within this research. It is clear from this that what therefore needs to be the focus of this framework of foreign policy should include is an analysis of the interaction between domestic and international politics.

Risse-Kappen hints at this significance of domestic-international relationship in his analysis on the United States, the Federal Republic of Germany and France. Through this he reveals how domestic structure and coalition-building processes in domestic politics determine the outcome of foreign policy (Risse-Kappen 1991). Similar suggestion has been previously mentioned by Katzenstein and Krasner in their analysis on the influence of domestic structure in the making of a foreign economic policy, especially in the industrial world (Katzenstein 1976; Krasner 1978). Different to these prior discussions, Risse-Kappen focuses on the processes leading to a decision of a specific foreign policy. He particularly suggests that in such circumstances anomalies and differences within governments response to the same international constraints depend highly on the dynamics of “political institutions, policy networks, and societal structure” (Risse-Kappen 1991, 486). This similar notion of domestic-international interaction in the creation of foreign policy has also been explored variously by Rosenau, Moravcsik and Gourevitch.

Rosenau’s accounts of the behaviour of states in the EU opened up the idea of an increasing link of domestic and international politics building a “linkage politics” (Rosenau 1969, 40-46). On the EU Moravcsik argues that these integration states are actually strengthened with more control on international areas previously untouched. What states do is what Moravcsik concludes as “internationalisation of domestic politics” (Moravcsik 1994, 60). Gourevitch on the other hand dealt with the “images” of domestic-international interactions. He avoided the limitation of over focusing on the domestic causes of

international politics by signifying the importance of examining both domestic and international simultaneously. In his “second image reversed” he focuses also on how the international system equally influences domestic politics (Gourevitch 1978, 882-884). On the level where policy requires international cooperation, such as in the protection of migrant workers, these two sides determine the outcome of the negotiation. According to Mayer, it is domestic political processes or the interactions between international and domestic processes that present the greatest impediment of international cooperation (Mayer 1992, 818).

### **II.1.2. Considerations on Domestic International Interactions in Foreign Policy Analysis**

Informed by considerations previously mentioned, the policy analysis developed in this research does not ignore the roles and significance of international and domestic politics in the foreign policy making processes. The matter of social protection policy for migrant workers presents an equally problematic level of analysis. In the analysis of foreign policy a suitable approach that can depict these conflicts and issues on both sides of the level involve discussions on the possible “games” that surface on domestic and international level. The analysis of these features contributes a great deal in portraying differing responses of states government on a particular international constraint. It is important that in order to develop a policy analysis that will be able to answer why an ASEAN level protection policy for migrant workers has not been established such analysis which permits the elaboration of international constraints to states response and vice versa is included. Approaches on the influence of domestic-international interactions on foreign policy making provides an important starting point towards appropriate consideration of all determinant factors which contributes to the

research puzzle. In this section a review of further domestic international approach in foreign policy will be conducted, followed with modifications and additions to the main approaches.

## **II.2. The Two Level Games Approach**

The two level games approach in essence compliments pre-existing views within international relations theory on national interests and what drives the foreign policy making process. Classical realism sees that national interests are the main drive for states actions, and therefore foreign policy, and that states main focus in international relations is on preserving their security and sovereignty in the assumed anarchic world (Rosenau 1995, 55-56). The form of these relations therefore resembles Morgenthau's "struggle for power" (Morgenthau 1978, 8, 4-15), where states national interests drive the attainment of greater power in the international world through whatever way possible. Neorealism modified this view by adding the effects of structure to the unit-level (domestic state level) (Waltz 1988, 617). This approach perceives that different to realism's perception, states' (unit-level) innate hunger for power is what determines outcomes, the international level (structure-level) also effects outcome of international actions. Actions at the international level are seen as influenced by interactions with the unit-level, making the analysis of dynamics on both level important in the investigation of actions. By doing this neorealism opened the analysis of international actions to include considerations of interactions between unit and structure, or in this case domestic level politics and international level politics (Waltz 1979, 62-64). "Causes at the level of units interact with those at the level of structure, and, because they do so, explanation at the unit level alone is bound to be misleading" (Waltz 1988, 618).

Neorealism does offer more insights into the importance of domestic and international level politics in determining actions and in this case foreign policy. Despite this fact, the

approach is not flawless in its tools of analysis. First of all, neorealism, like realism, is fundamentally state-centric and therefore assumes that the state in its unity is unproblematic “whose existence, boundaries, identifying structures, constituencies, legitimations, interests, and capacities to make self-regarding decisions can be treated as given, independent of transnational class and human interests, and undisputed (except from other states)” (Ashley 1984, 238). This in particular makes the approach unable to satisfactorily analyse or explain the role that non-state societal actors have in the case and thus, allowing a misleading investigation and answer to the research question. Secondly, neorealist’s structural analysis risks the danger of neglecting the effects of domestic level dynamics due to over-emphasis on the international systemic level of international politics. The approach, therefore will not allow sufficient room for analysis of domestic level actors that the research needs.

Another approach that has offered an analytical framework on foreign policy making, particularly with regards to domestic-international interaction, is liberal international theory. Liberalism, contrary to realism and neorealism, believes that there are non-state actors, including societal groups and individuals, which influence the conduct of states actions in international politics. These states actions, including foreign policy decisions, are constrained by a structure of international and domestic civil society (Moravcsik 1997; Doyle 1986). State preferences are therefore determined by their interactions with these societies (Moravcsik 1997). Models of liberal international relations (IR) theory defines that international engagement, for example in an international cooperation, and negotiations allows domestic policy making to be influenced by initiatives and ideas at the international level (Moravcsik 1994, 5-6). What subsequently occurs is a form of international engagement that elevated domestic politics as foreign policy in international politics. Liberal IR theory shifts the main actor of international politics from the state to individuals, societal groups or organisations that rationally interact (Moravcsik 2001, 5). Under the condition of

interdependence, states and their actions are embedded within interactions they have with these societal actors.

The Liberal IR approach puts the relationship between state and society at the centre of international politics by assuming that states foreign policy is influenced by their interaction with existing international and domestic civil society. This promises a wider possibility of investigation that allows a greater account on the role of non-state societal actors that is particularly significant for this thesis. Similar to neorealism, on the other hand, liberal IR theory is not without fault. It remains to be rationalistic in its approach and has in recent years moved from its “normative” roots to a more “positive” framework (Reus-Smit 2001, 574; Slaughter 1995, 727-728). Liberal IR theory’s emphasis on the role of domestic structures on states actions presents another dilemma where over-focus is placed on domestic structure at a cost of international structure. State preferences and policy decisions are viewed to be subject to dynamics within domestic norms as the domestic politics are “internationalised” through international engagements. This means international norms and institutional ideas are discounted from the analysis. The case in this thesis requires appropriate recognition of the influences of international norms as ASEAN plays a central part in the unfolding of a regional migrant workers protection policy. Consequently this makes the utilisation of liberal IR theory for the case unsatisfactory.

Two level games surfaced from similar acknowledgement of the influence of domestic-international interaction on individual states actions as presented by neorealism and liberal IR Theory. Two level games approach also recognises the need to take into account both levels and their significance in determining states policy decisions, specifically in an international agreement. Moving further from the assumptions and shortcomings of neorealism and liberal IR theory, the two level games provides an approach which takes into account the domestic and international level preferences simultaneously. By taking the interaction of both domestic

and international preferences to a situation of international agreement, the two level games framework brings together the dynamics of the “games” at both levels. The approach allows for equal consideration of international and domestic level by pointing out how negotiations at the international level remains to be influenced by the need for domestic ratification and how domestic preferences can be subject to the direction of international negotiations.

Robert Putnam in his analysis of the Bonn Summit 1978 with C. Randall Henning portrays an eloquent notion of “games” in which both diplomacy and domestic politics became entangled (Putnam and Henning 1986). He utilises this particular framework to analyse the patterns of bureaucratic behaviour in diplomatic tables (Putnam and Bayne 1988). He depicts processes at bargaining tables as “games” and continues by breaking down the “games” actors play at international and domestic levels within different conditions and steps of the negotiation, relating to constraints from the two levels. By way of doing this Putnam’s approach provides a practical tool to analyse processes involved in foreign policy negotiations as well as possible behaviour under particular circumstances and importantly the type of foreign policy that comes out of it. Putnam names this approach the two level games approach. I argue that this approach will shed light into the mechanics and processes that needs to be focused on in an effort to satisfactorily answer the research question.

Emerging from previous efforts of examining international and domestic politics linkages (Rosenau 1969, 40), Putnam’s approach lay its bases from the two levels present in international agreements. **The first level** represents the international bargaining table where policy makers negotiate the agreement with foreign counterparts, whereas **the second level** involves the discussions over the agreement made in the international level with domestic constituents before they can ratify the agreement (Putnam 1988, 435-436). These two levels are equally significant and need to be considered simultaneously by negotiators on the negotiating table for international agreement.

The logic of the two level games is that in the context of international agreement, negotiators appear to be in negotiation with both game boards, the first board with the foreign counterparts on the international level 1 and the second board with domestic groups and constituents on level 2. Actors within these two game boards often have different, and as Putnam argues, most possibly conflicting views in terms of strategies and preferences relating to the agreement (Putnam 1988, 444). What the negotiators are then demanded to achieve is to negotiate the best possible option of agreement that falls within the satisfaction of these two different preferences; the international actors in level 1, and at the same time maintaining it agreeable to the point of ratification for the domestic actors in the level 2 (Putnam 1988, 457-459). Not only that dissatisfaction from the international level can cause the negotiation significant disruptions, delays or demand a costly reneging, while dissatisfaction from the domestic level can render the negotiator displaced from his position, besides future implications in their political standings.

Putnam argues that at the national level “domestic groups pursue their interests by pressuring the government to adopt favourable policies and politicians seek power by constructing coalitions among those groups” (Putnam 1988, 434), while at the international level, national government “seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments” (Putnam 1988, 434). These two mechanisms provide pressures to negotiators in and out of the negotiation table and demand continuous and simultaneous consideration by the negotiator in international agreements (Putnam 1988, 434-435). This is where the dilemma stands for decision makers. In an international agreement the decision maker would need to come up with an agreement within a certain time limit. He or she then needs to further bargain within the two levels, or stall in order to find an agreeable point from which the agreement can be signed.

Consequently, the dilemma can bring the agreement to significant halts and delays, or even present needs of major alterations within the agreement.

### II.2.1. Existing Modifications of Two Level Games

After its publication, Putnam's "two level games" approach has become a versatile framework used by a variety of scholars who focused on many sections of foreign policy making. This approach has been applied in cases of different regions, different negotiations of different substances and with actors of different backgrounds, allowing a variety of revisions to be made. From these varieties of applications and critiques this section aims to find a gap in the framework to build upon a distinct framework that will be efficient in examining the case in this research. From this a review can be established on the possible application of two level games approach in the thesis, and furthermore whether or not such approach can be implemented in its original form or whether modifications may be required to best suit the analytical need of the case.

There are three major points that previous scholarly works on two level games have provided in terms of developing and further modifying two level games approach. **The first modification** revolves around the effort to apply two level games on a variety of different sectors and cases, different to its original model. For two level games application on environmental sections see Schmidt on environmental law within negotiations between the US and Canada leading to the Pacific Salmon Commission (Schmidt 1996), and Paarlberg, on agricultural policy making in a trade agreement within the Uruguay Round (Paarlberg 1997). On public and internal decision making see Yasuaki on US on the support in the Iraq war (Yasuaki 2005), Schoppa, Lehman and McCoy on convincing constituents in international agreement (Schoppa 1993; Lehman and McCoy 1992), and Mo and Iida for the mechanics of



the approach (Mo 1995; Iida 1993). Eichenberg and Dalton analyses how the Single European Act helps domestic coalitions (Eichenberg and Dalton 1993), while Carment and James took a different turn and analyse the role of ethnic groups and their members in decision making (Carment and James 1996).

From these scholarly works I can conclude that two level games offer a degree of versatility when analysing the influence of domestic-international interactions and can be applied to a wide variety of cases within the context of an international agreement. Two level games not only able to cover the many grounds and actors within international politics, the approach also remains relevant to more recent cases. Despite this fact the obvious lack of prior utilisation of two level games remains to be centred in its state-centrism and limited application in other areas than those in the developed world. I have found that research using the two level games that puts societal actors in focus and especially within the developing world is rare to find. This suggests that the case focused in this thesis which involves migrant workers protection policy in ASEAN and its relevant members will be valuable both theoretically and empirically for the development of two level games approach.

**The second modification** focuses on the formality and scope of the two level games approach. It is concerned with how a wider scope of negotiation including the negotiations outside of the tables and with the involvements of non-state actors has not been considered by the two level games. Cowles and Hira criticise this (Cowles 1995; Hira 2002), while Schmidt and Schoppa cite neglect on the effects of the “micro” level elements on negotiating outcome (Schmidt 1996; Schoppa 1993). Yasuaki claims that interactions and components between

and within these aspects are also important “micro” notions that the two level games would not have been able to satisfactorily take into account (Yasuaki 2005, 863-864).<sup>5</sup>

This particular modification is important for the case in this thesis. Non state or societal actors in ASEAN are greatly influential in putting pressure towards national government. Similarly, unofficial and informal modes of interactions outside the actual bargaining tables are also increasingly important. Particularly on the issue of migrant workers in Southeast Asia, various Southeast Asian interest groups are increasingly active in voicing their preferences on the national government’s policies through various unconventional media such as electronic communications, the internet or through informal workshops and lectures. This makes “micro” level elements important to be examined to better modify two level games approach, particularly for the case in hand. Interactions and components between and within these two aspects are also important “micro” notions that the original two level games would not have been able to satisfactorily take into account.

**The third modification** includes several efforts of variation that have been made which are closely related to the ontological claim of the two level games approach. The third modification relates to possible levels of interactions that should be included in the framework. In their three on three model Knopf and Forwood give more attention to domestic groups relations (Knopf 1993; Forwood 2001).<sup>6</sup>

The divisions offered by three on three models help clarify variables within the domestic-international interaction that can be similarly used to analyse the Indonesian and Philippines government’s approach within ASEAN with regards to a working coherent

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<sup>5</sup> Yasuaki exemplified this ‘micro’ level in notions of political culture of the nation and leader’s negotiating ability that are more determinant in Japanese approach on their relations with the US after the Iraqi war, instead of the traditional ‘macro’ level bargaining power and constraints.

<sup>6</sup> Knopf and Forwood presents a three on three model where three types of interactions was recognised between domestic and international environment; transgovernmental connections (bureaucratic politics), transnational connections (between domestic actors in two or more states) and cross-level connections (between government officials and domestic in two or more states)

regional migrant workers protection policy. This sheds new light to the case studied in this thesis. The particular model illustrates not only the versatility of the original two level games model but also its flexibility which allows the original model to be moulded and expanded to accommodate differing needs of analytical framework. The three and three model promises a manner in which two level games approach can include a detailed analytical framework and take into account multilevel interactive modes involved in this case. At the same time the model presents a way through which a theoretical improvement and actualisation of the two level games approach can be conducted.

### **II.2.2. Gaps of Analysis in Two Level Games Approach**

From these previous works some gaps of analysis that need to be tackled in this research can be pointed out. Filling these gaps means providing not only modifying the two level games approach but also contributing an important revision to the development of the two level games model. By conducting this I am also able to frame a more comprehensive framework of analysis for the case of the Indonesian and Filipino government in ASEAN.

The **first** gap of analysis lies in the state-centric tendencies of the approach. From its development and its recent revisionary efforts, the two level games approach has been applied under the assumption of a unitary state actor. Consequently, this means neglecting the influence of other actors within a modern state view, which includes societal actors within the “organisation” of the state. Having said that, some of the works provided by Mo, Iida and Paarlberg as well as Lehman and McCoy (Lehman and McCoy 1992, 400-444) give close recognition of how two level games can accept the plurality of the state (Mo 1995; Iida 1993). Despite this recognition, they remain unable to point out the roles of societal actors how they provide pressure on international agreement. Within Indonesia and the Philippines

social issues are particularly fronted by societal actors such as migrant and migrant workers NGOs, labour groups, concerned academics as well as human rights groups. Consequently in policies on social issues these very societal actors will be the major advocates. Including societal actors in the modified framework will therefore be essential for this research.

The **second** gap of analysis in this light is seen as a consequence of the first weakness of the two level games approach. It is because the two level games approach is state-centric in its assumptions, it does little to explain how societal actors can apply pressure on an international agreement. The two level games approach therefore cannot provide an overall satisfactory explanation as to how societal actors within states can influence each other cross-nationally and how this interaction can affect the negotiation. Because these have been neglected by the two level games approach, important channels in the case including interests, international lobbies, transnational and regional networks cannot be fully explored. As networks as such can play an important part in pressuring ASEAN, it will be important to consider them within the framework of this thesis.

The **third** gap of analysis here is that utilisation of two level games has over-focused on “high-politics” issues such as security, politics and economy, giving minor attention to its application in an agreement on societal issues. Putnam’s two level games have not been sufficiently used in the realms of societal issues. Although as has been seen in the previous section, Carment and James have made some effort in including such discussions (Carment and James 1996), bargaining of societal issues were not the main focus of the study. As the case in this thesis refers to a social issue, and therefore “low politics,” a modification to include these elements is therefore necessary to provide the case with a satisfactory framework.

The **fourth** gap within the analysis is that two level games has not been widely utilised in a context of regional agreement in the developing world in previous works. Scholars have utilised the approach in the context of the EU. These include Cowles and her analysis on the role of businesses on EU decision making (Cowles 1995), Lee Ann Patterson and her three-level analysis on the makings of EU agricultural policy (Patterson 1997) as well as Eichenberg and Dalton on the Single European Act (SEA) (Eichenberg and Dalton 1993). For the case in this research it is essential that two level games approach is modified according to the regional context of ASEAN where the background of the case lies.

The valuable contribution of two level games in this thesis is to point out significant levels of analysis that need to be considered in the event of an international agreement. The application of two level games in the context of ASEAN cooperation will decipher influential institutions that need to be examined further and highlight the importance of their interaction. The question at this stage of the literature review refers to which possible form of analytical framework is best to modify the versatile mode of analysis of the two level games approach in order to provide satisfactory answer to the thesis' research question. Initial critiques indicate that the framework needs to take into account societal actors, including government institutions and individuals, especially in their role of creating constraints or pressures from the two levels' domestic and international stage. This notion of "constraints" or "pressures" therefore represents what the modified approach needs to address. The tools that need to be sought for are the constitution of these "constraints"; how these constraints come about and how they play out in a regional policy making.

### **II.2.3. Considerations of Regional Institution**

After elaborating on the possible modification the analytical framework in this thesis seeks to conduct, it is important to take into account the degree of which institutions, both at the regional and national level, affect previously mentioned constraints and pressures. It is specifically significant that the framework chosen for this thesis acknowledges these influences in order to fully measure the extent of ASEAN's pressure to Indonesia and the Philippines, and vice versa.

#### **Enter: Institutionalism**

The case in this research is set at the level of regional association. In so doing it demands the consideration of some institutional context. This includes particular interactional tendencies that may bring different nuances to the application of two level games approach, and consequently demands modification to the approach in this research. Keohane suggests that in order to understand how international cooperation comes into being (or in this case does not come into being), it is important to understand how international institutions operate (Keohane 1988, 380). It supports one reason why studies of institutionalism will also be considered in this discussion.

What type of institutionalism should be added to support two level games? Institutionalism discussed here will follow Keohane's division of the major approaches in institutionalism; the rationalistic institutionalism, and the reflective institutionalism (Keohane 1988, 386-393). Rationalistic institutionalism here refers to the formal approach in which institutionalism sees international organisations. It assumes that actors within an organisation are acting according to their rational calculation of what is beneficial for them. These theories view institutions as "affecting patterns of costs" (Keohane 1988, 386), referring to the "costs of specifying and enforcing the contracts that underlie exchange" (North 1984, 256). Under

these considerations the most well developed literature in this form of institutionalism is neoliberal institutionalism (Pevehouse 2002, 515-518).

Neoliberal institutionalism suggests that institutions can lead states to cooperate in an institution because of the information provided and reduced transaction cost of cooperation itself, supported by an interdependent condition of the relations between states (Schulz, Soderbaum, and Ojendal 2001, 9-11). Institutions are believed to be able to promote change through cooperation and lessen the possibility to defect by reducing the likelihood of rational states to cheat (Acharya 2001, 1-3). The framework's rationalistic assumptions work in similar fashion to the realist methodology and regard actors as acting solely in search for a particular gain in their participation in the institution (Abbot 2005, 13). Therefore institutions only exist when members receive incentives from having them and thus have certain reasons to maintain them (Keohane 1988, 386). This makes the approach useful to see motives behind the establishment of certain institutions, or why members choose to cooperate instead of "going it alone" (Nye 2002, 12-17), especially when their tangible "power" is seen to be sufficient to do so. Despite this the weakness of the approach is apparent within its own assumptions. One of his points derived from the writings of Ernst Haas (learning) (Haas and Haas 1995) and Hayward Alker (historicity) (Alker 1986). The claim here is that rationalist institutionalism assumes that preferences are fixed, which suggests an oversight in relation to the development and changes in sets of norms, institutions and configuration of world order. Because they ignore exactly this, rationalist institutionalism will not be able to enlighten scholars on how interests and preferences change with the changes of the norms and order in the system.

From this perspective rationalistic institutionalism only sees the dynamics of institutions within the view point of institutional strength and not on the values promoted by the institution. This consequently leaves little room for the analysis of culture and norms as

ASEAN claims to uphold. The framework of cooperation within ASEAN is influenced by evolving cultures and norms between its members at a period of time. ASEAN's integration is closer to what Benedict Anderson termed "imagined community" (Anderson 1991, 5-8), where its existence is essentially an "imagined" state brought about by "comradery and a sense of fraternity" which has managed to attract people into defending it although it does not always exist physically (Anderson 1991, 7). On the other hand there is tendency to refrain from "excessive institutionalization" and choose the informality of inter-individual interactions rather than formal institutions (Acharya 1997, 329). ASEAN's policy norm of "consensus" within "the ASEAN Way" insist that political integration remains at the diplomatic area that deals with "low politics" issues such as economy, social and culture. The institution that arises from this code of conduct produces a softer type of regional integration that has "non-binding plans and guidelines," and its secretariat has no structural authoritative power over members (Sakakibara and Yamakawa 2004, 110-111).

As also suggested by Douglas Webber and touched upon by Walter Mattli, for the integration in Southeast Asia to be working successfully it depends on the role of the individuals, whether leaders of states or other relevant institutions in the region (Mattli 1999, 55-56). Webber reconfirms this point by putting the example of the role of Suharto as a leader of ASEAN during his time as President of Indonesia (Webber 2003, 134,137). A more normative and reflective approach of this institutionalism in this case can offer a framework of study that also considers the role of cultural norms and values as well as social forces whose influence is not based on the calculations of costs and benefits.

Reflective institutionalism in its development has been influenced by sociological views and parts of constructivism, and thus referred to in recent literature as sociological institutionalism. The roots of sociology of institutionalism were found in some of the first notions in sociology on "institutions." The first notions started with the recognition of



institutions, their place, positions and role in the society. Through this revelation of the importance of institutions, scholars extrapolate the ways in which institutions can permeate individual realms and/or organisations. From this inference analysis on the role of culture as a vessel to facilitate the creation of institutionalised behaviour under “logic of appropriateness” (Finnemore 1996, 330; March 1994) was developed to pinpoint the degree of influence institutions have in the social life. In the following section I further explore the viability of this particular form of institutionalism from the start of its evolution and in particular in the view of modifying two level games approach.

### **First Sociological Notions of Institutions**

Some of the first notions of institutions in sociology were embedded within the study to seek order in society conducted by Spencer, Durkheim and Weber. The first true sociological functionalist in many ways, Herbert Spencer, analyses institutions in a society through his analogy with the natural world. He sees the society as consisting of “different sub-systems or practices” which are functionally embedded to the larger entity that they are a member of. Spencer then suggests a notion that similar to natural adaptation, the social system is also able to make adjustment according to their environment to survive (Spencer 1961; Baert 1998). His claim states that institutionalisation occurs when the society experienced increased adaptation and integration to its environment (Turner, Beeghley, and Powers 2002). Durkheim even notes that sociology itself needs to be defined as the “science of institutions, of their genesis and functioning” (Durkheim 1982, 5). His analysis includes the practices, rituals and individual’s thoughts that were the results of social forces existing in institutions. According to Durkheim the individual is controlled externally by what he refers to as “social facts” which is particular ways of thinking, acting, feeling, perceiving of certain aspects

within social life and society (Durkheim 1982, 50-51). In this sense with the tools of norms and rules institutions create a sense of “order” (Durkheim 1982, 54-55). By providing these limits or “constraints” the institution is influential to the individual’s actions in the society.

Max Weber sees institutions as the primary forces of society by suggesting that institutional life is not merely the reflection of societal change but instead the potential cause of it (Nash and Calónico 1993, 3-4). Weber’s theory of bureaucracy on a “rational” institution within a rational-legal bureaucracy portrays the significance of institutions within a society-based analysis (Peters 2005; Weber 1976). He also elaborated how culture facilitates institutionalisation and thus, carries institutional implication to the society. This particular idea can also be seen from the works developed to include principles of routines and traditions that affect social life (Parsons and Shills 2001; Mead 2003), while Robert K. Merton interchanges the idea of culture to that of structure (Peters 2005; Merton 1938) .

### **From the Sociology of Institutions to Sociological Institutionalism**

The sociological view on institutions and its relation to the form and action of both society and individuals had increasingly become an analysis close to organisational scholars. Literature from previous scholars of organisational actions that adopt sociological frameworks for their foundation and seek for effectiveness developed the bases of what was now known as sociological institutionalism (Meyer and Rowan 1977; Meyer et al. 1997; March and Olsen 1998; Scott 2001). Scholars of the Stanford School who developed this approach position themselves within a line of critique on the realist model’s rational assumptions. Although sociological institutionalism does not reject by and large rationalist inference method, it reveals what rational models might have overlooked in defining actors behaviour (Buhari-Gulmez 2010, 254-256).

Borrowing the principles of culture that was a previous conviction of Weber, Parsons, Shills and Merton, sociologists of the globalisation era come up with an analysis that became known as “world ‘society’” (Meyer et al. 1997, 144-146). This analysis has also been previously utilised to analyse institutions such as the European Union (Schimmelfennig 2003; Aspinwall and Schneider 2000; March and Olsen 1998; Soysal 1994). Scott suggests the symbolic elements of institutions consist of “multifaceted, social structures, made up of symbolic elements, social activities and material resources” (Scott 2001, 49), while Jepperson claims that institutions entail socially constructed rule systems reproduced by routines and operating as “fixtures of constraining environments” (Jepperson 1991, 149). Meyer and Rowan on the other hand build their argument on the notion of institutional environment by focusing on the “myths” embedded within an institutional environment (Meyer and Rowan 1977, 340-341).

The development of sociological institutionalism is particularly promising for the policy analysis sought to be developed in this thesis, and particularly for ASEAN and its migrant workers protection policy. The analytical mechanism covered by this approach allows more space to include a wider notion of institutions and particularly shed light on the works of normative structures in institutions. This will be important for the development of a satisfactory policy analysis framework that provides appropriate explanatory mechanism to decipher the case in this thesis. In addition, it will significantly benefit the case of ASEAN by enabling the research to see to what extent the normative structure involved within the association supports the making of migrant workers protection policy.

### **II.3. Two Level Games and Sociological Institutionalism in Practice**

Sociological institutionalism provides a framework to analyse matters that rationalist approaches, such as liberalism, realism as well as two level games, overlooked in their analysis. By revealing the works and dynamics of structure and culture in human institutions, sociological institutionalism is able to look further into rationalistic assumptions to unravel how culture and structured norms play a part in political events. Despite this, I argue here that particularly for the case in this thesis the approach of sociological institutionalism is unsatisfactory when applied solely and requires an additional framework. Scholarly works on sociological institutionalism have been overly focused on structure and culture in the cost of agency in its analysis. Martha Finnemore also states that this made sociological institutionalism “mis-specify the ways in which social structure produces changes and the content of the social structure itself” (Finnemore 1996, 343). Keohane depicts how sociological institutionalism lacks a clear reflective research program that could be employable by students of politics (Keohane 1988). Keohane equally remarks on how both rationalistic and sociological institutionalism needs to pay sufficient attention to domestic politics (Keohane 1988, 391-392). For the purpose of this research, a combination of both a largely rationalistic approach and sociological institutionalism is deemed to provide the most satisfactory framework of policy analysis for the case at hand.

The idea of marrying rationalistic and largely idealistic reflective approach such as sociological institutionalism has been a concern of several scholars of institutionalism like Keohane. He suggests that the emergence of such synthesis may start slowly from competition and dialogue between these two research programs (Keohane 1988, 393). Jeffrey Checkel similarly observes this by noting that “compliance with international norms involves both instrumental choice and social learning” (Checkel 2001, 581). For the analysis of

foreign policy in this thesis the considerations of both rational calculation of cost and benefit as well as sociological learning which includes the roles of norms and ideas are equally important to be applied.

Avner Greif, for example, have utilised a combination of two level games and sociological approach to explain how norms, beliefs and relations affect the institutions and economic actions of Maghribi and Genoese traders. Societal mechanisms were found to be influential in their business dealings and contract negotiations, which Greif proceeds to explicate utilising game theory (Greif 2005). This combination is an important example to see how both analytical frameworks can complement each other especially in this thesis. It will assure simultaneous consideration of preferences from both individual member states level preferences of Indonesia and Philippines and the ASEAN as well as other institutions in the regional level, while allowing more insights into normative structures and societal forces that drove these preferences. This is particularly significant in order to account for all relevant factors in the case and arrive at a satisfactory answer to the research question.

### **II.3.1. The Contributions of Sociological Institutionalism to Two Level Approach**

At this point of the chapter I refer back to what the research question asks for. The research question in this thesis aims to see what factors influenced ASEAN's inability to establish a regional policy framework to protect migrant workers, especially looking at its relevant member countries. The centre of enquiry in this research as what has been previously elaborated lies in the conception of policy "constraints." For these "constraints" to push the governments of ASEAN members to opt for one foreign policy decision the governments leaders have had to interpret them with their specific rationale.

Constraints would only be “constraining” after actors’ cognition determines them to be. This makes it important to focus on aspects that dominate this cognitive process. In this process actors utilised their rationale to “calculate” the cost and benefit of an action according to its interests. What the research needs to do in this phase is to see how both two level games and sociological institutionalism frame these notions of rationality and interests in the face of actors’ policy making qualities. Rationality defines how actors view the world and provide reasoning into their political actions. At the same time rationality also determines actors’ priorities which will be apparent in their policies and approaches. Interest has been suggested to be the cause of any actions by actors of international politics. National interests, in particular have been thought to be the sole drive for nations to choose a certain course of action and not others. Interests function to push actors of the social world to act in a certain way, even if it does not conform to the cost and benefit calculation of the action in question. The belief is that despite what seems to be the cost benefit calculation of an action, the influence of interest holds a greater stronghold on actors’ actions. Another conception that will also be looked into in this section is that of constraints. Constraints provide obstruction to the progress of agreement by implementing pressures to actors within a policy making process.

### **On Rationality**

Arguably two level games come from a group of approaches that rely on rational methods in arriving at their inferences. Coming from a sociological approach, sociological institutionalism comes from a more ideational method and behavioural approach. However this premise does not mean that the two level games approach is more “rational” than

sociological institutionalism. In fact in this section we shall see how the two approaches only vary in their conception of rationality.

Looking at the reason why particular policy action is chosen means delving into the causes of this importance and looking at the logic behind the “cause” (Copi 1963). Its investigation entails defining how actors form their cause when faced with a particular policy situation and how they act on it. In short, rationality connects “causes” to “effects” within this research defines what influenced ASEAN, Indonesia and the Philippines failure to push forward a regional policy to protect their migrant workers.

The two level games approach sees actions as worthy to be taken if they are “rational” by way of utility, that there are more benefits to conduct such action than to not do it at all, or to do something else. This logic presents the rational method with the bases of its claims; that for every action there is a calculation that leads to the benefit of the actor, hence “logic of rationality,” “utility,” or “instrumentality” (Bentham 1879; Weber 1978, 24-27).<sup>78</sup> The two level games approach posits that actors seek to attain the utmost benefit in their negotiations at the two levels, because it is “rational” to do so.

Two level games in practice sees that for a national leader to embark on a set of actions in negotiating tables he/she must have had established what is rationally beneficial for them to do. Although in the negotiating table there exist multiple negotiations that force leaders to negate down their proposed agreement, the two level games point out that it remains a rational action. In two level games national leaders face multi-level pressures which force

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7 On discussions of utility and how the principle of utility provides (or should provide) the reasoning behind human's action see the principles of utility according to Jeremy Bentham that is seen to be “property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness, (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered” (Bentham 1879; Weber 1978, 24-27).

8 Traditional account of logics was offered by Max Weber through his elaboration on types of orientations of actions. In this classical elaboration actions have four types of rational; the instrumental-rational (*zweckrational*), the value oriented rational (*wertrational*), the affectual and the traditional. The logic within the rational that is closer to logic of utility is that of the instrumental rational.

them to strategise the negotiation to ensure all levels are “satisfied” (Tsebelis 1990, 188). In order for this to be achieved both internationally and domestically the leader needs to balance actions at both levels. “Domestic groups pursue their interests by pressuring the government to adopt favourable policies and politicians seek power by constructing coalitions among those groups” (Putnam 1988, 434), while at the international level, national governments “seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments” (Putnam 1988, 434). Therefore what is considered “rational” for two level games is to ensure that agreement is achieved without upsetting both of these levels or keeping the levels “satisfied”.

For the two level games approach national leaders are seen to have resorted to particular actions or opt for certain policy proposal in a foreign policy negotiation based on rational calculations of the consequences of these actions. Although at first glance certain policy outcomes seem to be an anomaly according to this “logic of consequences” the outcome may have the least consequence for the leader out of any other possibilities. Two level games assumes that in international negotiation leaders have had to consider this logic in both domestic and international level.

Sociological approaches lie in a different spectrum than that of the rational model. In their view “social action, even strategic choices are underpinned by social factors that give choice and action more varied foundations than simple calculations of optimality” (Jenson and Merand 2010, 78). Sociological institutionalism argues that it is institutions that socially affect actors’ actions by instilling particular ideas on how actors should view social facts. Institutions instil these ideas through rules and regulation on its members which impose the implementation of particular routines, discourses and symbols (Scott 2001). These regulations, routines, discourses and symbols constitute actors’ social environment which through value permeation constrains actors behaviour (Jepperson 1991). By being a part of



the state institution foreign policy makers play part in this social environment and are subject to its values and ideas. Policy outcomes are therefore defined by what are most valuable according to institutionalised values and presented by discourses as a method of socialisation. Under this assumption the investigation to certain foreign policy outcome should include examination into institutional values, ideas and discourses in a particular institution.

Although it sets its bases of ontological claims on the opposite spectrum than the rational method, it does not mean that sociological institutionalism does not have a “rationale.” If two level games believes in the influence of consequences in promoting particular behaviours, sociological institutionalism sides on the “logic of appropriateness” (March 1994, 61). By “appropriate” sociological institutionalism refers to how political actors base their actions. Actors choose a particular course of action in their political life because of what they view as appropriate according to socially constituted norms and values in their social environment (March and Olsen 1998, 951-952). Actions are seen to be more “appropriate” than “rational” according to the views of sociological institutionalism and this is instigated through the distribution of ideas.

Ideas carry structural qualities with regards to institutions by way of affecting an individual’s perception. Institutions provide the terms through which meanings are assigned in social life (Hall and Taylor 1996, 15), hence socially constituting individuals’ view of what they are and what they need to do. This refers to when institutions distribute ideas through instilling rules to their members, or what is known as institutionalisation. Social interactions within the institutional realm facilitate the distribution of these ideas and promote an “appropriate” institutional behaviour for members of the institution. This process constitutes sociological institutionalism’s “rationale” behind what actors see as the most “beneficial” action. The rationality here occurs not from a calculation of benefit or consideration of

expected consequences, but more caused by actors' cognition, which arise as a result of their position as members of their social environments.

Compared to two level games, sociological institutionalism assumes the roles of norms and values within actors social institutions as highly more important than possible expected consequences. Sociological institutionalist approaches function by explaining that the actions of social actors are based on internalised culture, values and norms, and not their own calculation of utility. As sociological institutionalists rational logic is essentially constituted by values and norms within the social environment, state interest and action are determined by the social structures of states social environment. According to this logic the institutions in this thesis are influenced by their social environment in their decision to refrain from establishing a coherent regional policy for the protection of migrant workers.

### **On Interest**

Two level games approach and sociological institutionalism have differing views on the position and implications of interests for actors in a foreign policy making process. For the rational method, the notions of preferences and interests are critical in explaining actors' actions, although much of the origins of these interests have been largely ignored (Nee and Ingram 1998, 33). Two level games did not go to great lengths to examine what interests are. Similar to all approaches as in the rational method, interests are regarded to be given and inherent in actors' being. Interest is something that is seen to be set within actors' existence and independent of actors' actions and interactions. For two level games interest is a cause for groups in both international and domestic level to drive pressures into leaders at the negotiation table. Interest is what drives decisions on the negotiation table and its existence is given within actors.

Informed by inferences of constructivism, sociological institutionalism sees interests as not something that is given to actors' being, but instead something that occurred as an outcome of actors interactions within the environment of his social institutions through shared ideas or "inter-subjective" agreements (Ruggie 1982; Wendt 1999).<sup>9</sup> According to sociological institutionalism actors membership and interactions within their social institution allowed the revelation of actors' interests. DiMaggio and Powell suggest that in this process what an institution does is redefine the criteria in which actors redefine their preferences (DiMaggio and Powell 1991).

Interests in sociological institutionalism tie closely to the notion of "identity." What actors see as their interests or preferences relate to what is "appropriate" to do "ethically" and "cognitively" and therefore essential to a particular conception of "self" (March and Olsen 1998, 951-952). Appropriate actions are "appropriate" because actors matched specific situations with the obligations to act according to certain roles embedded within a particular identity (Jenson and Merand 2010, 78). These identities then inform actors' interests in social actions, which means that they are not pre-existent, but constituted by actors' institution of norms and values (Reus-Smit 2005, 196). Consequently, this also means that interests are dynamic of actors' institutional environment and not rigid within actors being. Whilst two level games sees actors' interests as set and exogenous to actors interactions, for sociological institutionalism actors' interests are endogenous to actors' institutional interactions (Rosamund 2007, 122-126). Schimmelfennig clearly explains the substance of interest itself according to sociological institutionalism as "products of collective ideational structure and social interactions" (Schimmelfennig 2003, 69).

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<sup>9</sup> According to Wendt identities and interests of actors are constructed by the shared ideas as opposed to rational conception of identities and interest as 'given' by nature.

In two level games interests are determined by way of prioritising preferences of available policy options in an international negotiation. For sociological institutionalism it is interactions within social institutions that inform the way actors see their interests. According to Schimmelfennig the bases of sociological institutionalist characteristics lie in two mechanisms; *idealism* and *structuralism* (Schimmelfennig 2003, 68). This means the forms of interests and identities adopted by actors are determined by structure of ideas and social interactions within institutions. It is not necessarily a simple matter of self-interest, preservation or achieving the most goals, as rationalist method would see this and two level games is based on.

The two level games have only regarded interests as acquired by states to be implemented in the outcome of international level policy making. Non-state actors or individuals are acting as an extension of the states interests and remain to uphold the states interests therefore the interests in question can only be that of national interests. This makes two level games insufficient to provide a satisfactory tool to analyse the substance of this “interests.” This is where sociological institutionalism comes in. Sociological institutionalism regards societal actors to be as equally able as state actors to have and apply interests in every level of politics, including international politics.

As explored previously, ASEAN is in itself an entity with distinct characteristics that were constituted from specific experiences and influences from its social environment. For two level games the association obtain their existence because members’ mutual interests provided reason for members to remain associated. The approach of sociological institutionalism suggests that for ASEAN to have survived to this point means that shared identities were formed among its members and that the values and norms established within the organisation support the survival of the organisation. Shared identities therefore suggest that members’ interests that resulted from it should match roles assigned by institutional

values. The approach of sociological institutionalism suggests that an analysis into the institutionalisation process that involves the creation of values, norms and informs identities can reveal members' interests. This analysis will be able to identify whether the norms and values within the institution of ASEAN support the creation of migrant workers protection policy.

### **On Constraints**

Two level games in particular include the views of constraints within multiple rationally calculated propositions of negotiation outcomes. Although not all of these propositions see this notion of constraint as unattractive (Keohane 1988; Mo 1995),<sup>10</sup> the constraint that is referred to in this section is one that provides halt, delay or even postponement to international negotiations. For two level games constraints takes the form of pressures or limitations in correlation to varying demands from both domestic and international levels on international negotiation tables. Differing interests and strategies from groups of the two levels constrained national leaders from acting to the maximum of their ability and or from achieving the projected maximum goals set at the beginning of entering the negotiation. This view of constraint according to two level games is tangible, relating to logic of consequences, and rigid. Sociological observation on constraints on the other hand relate closely to institutionalised values or norms that allows particular cognitive interpretation by actors. "Constraints" are only "constraining" when the process of

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<sup>10</sup> According to a variety of two level games propositions constraints can be seen as preferable by national leaders within particular sets of conditions. Keohane suggests that in a successful negotiation executive would rather have his hands tied by domestic constraints when he does not have aligned preferences. Mo explains this by defining the negotiator as the 'principal' and the 'agent' for those who have the right to exercise veto. As the principal gets constraints from the agent, under complete information it reduces the range of proposals that the foreign country can successfully make and benefits the principal. The symmetry of information in this case is significant as the effects differ between international symmetric information about domestic constraints and domestic symmetric information.

institutionalisation and cognition define it to be. Sewell notes that through cognition the notion of this “culture”<sup>11</sup> is twofold; “culture both constrains and enables” (Sewell 1992, 4).

Actors within these two game boards often have different, and as Putnam argues, most possibly conflicting views in terms of strategies and preferences relating to the agreement (Putnam 1988, 434). What the negotiators are then demanded to achieve is to negotiate the best possible option of agreement that falls within the satisfaction of these two different preferences; the international actors in level 1, and at the same time maintaining it agreeable to the point of ratification for the domestic actors in the level 2 (Moravcsik 1993, 3-5). The dilemma faced by negotiators is this; not only that in the international agreement a time limit exists, often the demands of domestic and international politics conflict (Snyder and Diesing 1978, 7). Consequently, the dilemma can bring the agreement itself to significant halts and delays, or even present needs of major alterations within the agreement. On certain occasions in negotiations constraints can also relate to what each negotiators see the others’ actions would be. This relates to the idea of “strategy” that involves rational calculations to influence other negotiators’ behaviour. The action of a negotiator is then limited to what they rationally expect other negotiators to act according to the range of his own actions (Schelling 1960, 21-22).

Whilst two level games’ depiction on the notion of constraints is related tightly to how states are limited through rational mechanisms where utility calculations on consequences are present, sociological institutionalism regards constraints from another point of view. Sociological institutionalism view on the constraints of actors’ actions is limited to how it puts actors in social actions. Individuals as actors in a social or political context is seen as not

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<sup>11</sup> Referred here to institutionalised values, norms and ideas that constitute identities of actors and individuals that are members of a particular institution.

a “producer” or an active component of the case, as a rational method would prefer, but more as a “product” of his social environment and society (Finnemore 1996, 333).

In two level games the utility function of actors incorporates factors from both levels. Because foreign policy surfaced from domestic level dynamics, “changes in each state’s foreign policy will be driven by domestic political concerns as well as by the external environment” (McGinnis and Williams 1993, 48). Two level games sees domestic level politics as a significant source of bargaining power, and therefore decision makers need to please actors in this level in their foreign policy decision (Mastanduno, Lake, and Ikenberry 1989; Iida 1993). The consequences of this are twofold. A foreign policy that contradicts domestic preferences is considered to be unsuccessful, which consequently render the policy maker responsible unpopular. For political actors involved in this decision making, ensuring that the preferences of domestic level politics is put forward in the policy is hence of high importance (Carment and James 1996, 527-528). The argument here is that to have a successful agreement the negotiator needs to come up with proposals that will still win domestic ratification (Chung 2007, 51).

## **II.4. Conclusion**

Putnam’s two level games logic provides a starting point for the analytical framework of this research. It focuses the analysis into what drives the interest of the policy makers as well as depicts their dilemma in coming up with an “optimal” policy outcome. Sociological institutionalism begins from these platforms to further examine possible origins of these dilemmatic constraints faced by policy makers. The approach’s belief in the roles of ideas, norms and values in the process of institutionalisation to influence actors’ perception can shed new light into the case and offer more satisfactory explanation to these notions of

“constraints.” The approach views that these notions of allowance and constraints are socially constituted. These social constitutions involve institutionalisation as suggested by Selznick; “institutionalisation constrains conduct in two main ways: by bringing it within a normative order, and by making it hostage to its own history” (Selznick 1992, 232). In the process of institutionalisation institutions provide the terms through which meanings are assigned in social life (Hall and Taylor 1996, 15), hence socially constituting how the individual view what they are and what they need to do. As the content of institution’s influence is largely cultural, consisting of social norms and values, Finnemore refers this process to an “external cultural legitimation” (Finnemore 1996, 330). The adoption of certain actions and policies relate to views that norms in the social environment suggest the adoption of a certain policy as “socially legitimate” than others (Hall and Taylor 1996, 16-17). In this course of action what legitimates particular organisations and social actions are social values within the social environment (Finnemore 1996, 343). These social values evoke the sharing of similar “cognitive maps” (Finnemore 1996, 333) which in turn embody the understanding of institutional practices that are “appropriate,” hence the “logic of appropriateness.”

Sociological institutionalism sees that “collective rules and schemata” structured the cultural or institutional environment of social actors (Jepperson, Wendt, and Katzenstein 1996). For actors to resort to a particular course of action as is viewed in this case, sociological institutionalism suggests that values and norms in the process of institutionalisation support this action. Although actions may not appear to be bringing, to borrow two level games’ terms; “optimum utility” there are still normative institutional considerations involved behind these actions. Sociological institutionalism believes that actors’ institutional norms and values applied through rules and regulations provide actors with constraints related to the actions they can and will take on any level of their political activities.



I argue in this section that the strengths and weaknesses of both two level games and sociological institutionalism can play together to arrive at a policy analysis tool which provides a satisfactory framework for the case at hand. The two level games approach in this case will be able to shed light on the rational actors relevant to the case in relation to the “levels” of analysis proposed by the approach. This particular approach also functions to define determinant interactions between actors of different levels and suggest actors’ tendency of resorting to one action over the other under certain situations. Within its assumptions two level games offers the cause to the anomaly presented in the research question within its notions of “pressures” and “constraints.” Sociological institutionalism will then come in to unravel the substance and processes that lead to the work of these pressures and constrains. The approach’s framework on social learning and the role of normative structures provides the research with valuable insights on relevant actors’ institutional characteristics and their influence on actors’ preferences, hence, their foreign policy behaviour. This means that not only will the policy analysis framework unravel the manner in which institutions at the ASEAN regional level and the national level of the Philippines and Indonesia, interact in the institutionalisation of migrant workers protection policy, they are also able to examine what types of structures influence this institutionalisation in both levels. By conducting these examinations the combination will be able to shed light into institutionalisation factors on both levels that may interfere with the agreement towards a regional policy for the protection of migrant workers in ASEAN.

As this chapter has established the significance in applying a modified two level games with sociological institutionalism in the policy analysis, the thesis will now move towards achieving a comprehensive tool of analysis for the case in this thesis. It is why the next chapter provides a more in-depth look at how the combination of two level games and sociological institutionalism work as an analytical framework in this thesis. The next chapter

includes further discussions on specific analytical tools of this combination and their operationalisation in the analysis of the research puzzle. In addition, notes on the working hypotheses of the thesis, informed by elaborations within Chapter II, are also included.

## **CHAPTER III**

### **THE THEORY OF TWO LEVEL SOCIOLOGICAL INSTITUTIONALISM**

#### **Introduction**

In this chapter I develop a theoretical model by which a policy analysis on migrant workers protection policy will be facilitated. This chapter has four main sections. The first section deals with a preliminary hypothesis drawn from the information in the first and second chapters. It elaborates the suggestion that two level games approach with the modification of sociological institutionalism provide a satisfactory analytical framework for this thesis. The second section discusses in detail the analytical tools of two level games and sociological institutionalism. This section reviews the basic assumptions of two level games and sociological institutionalism and synthesises the two approaches to a workable analytical framework for the thesis. The third section further discusses the synthesis and modification in greater detail leading to a framework of operationalisation. In the final section I provide a mechanical framework of operationalisation for the analysis in this thesis.

#### **III.1. Summary of Working Hypotheses**

In order to come up with the working hypotheses a reminder of what the research question in this thesis is needs to be presented. The research questions in this thesis are two-

fold: the underlying research question and the auxiliary research question. The underlying research question asks why ASEAN has not been able to institutionalise a coherent regional policy framework for the protection of migrant workers and the auxiliary question enquires why major workers sending countries, Indonesia and the Philippines, have been unable to support the institutionalisation of a coherent regional policy framework for the protection of migrant workers. In this section the questions are put side by side to different possible answers to each of them. The working hypotheses in this section are not intended to test theories and assumptions but to provide a starting point by way of presenting available assumptions and suggesting possible theories they can further build upon. These working hypotheses are proposed as a guide for the investigation conducted in this thesis.

For both of the questions the same assumptions on possible analytical framework, as elaborated in the previous chapter, apply. For the case of ASEAN and the policy to protect migrant workers two level games theory suggests that moves towards coherent policies were constrained from both the regional and domestic level. Sociological institutionalism reveals that these constraints are constituted of institutional pressures from domestic and regional actors. These pressures are essentially outcomes of institutionalised processes that thus depend on the process of institutionalisation.

For the underlying research question of **why has ASEAN not been able to institutionalise a coherent regional policy framework for the protection of migrant workers**, the possible answers entail several main points; in the regional agreement to formulate migrant workers protection policy there exists a two level games dilemma between preferences at the regional and domestic level which constrains decision makers from progressing further. These constraints occur because of the possibility that institutionalisation at the regional and domestic level has not come up with a consolidated idea of migrant workers protection. This can happen if institutionalisation of ideas supportive to migrant

workers protection is not able to outweigh other existent ideas that are more institutionalised and identities that may have been contradictory.

For the auxiliary question of **why Indonesia and the Philippines have been unable to support the institutionalisation of a coherent regional policy for the protection of migrant workers** there are several possible points to consider in the answer. Prior assumption suggests that for the case of the migrant workers policy of Indonesia and the Philippines the policies have not been established because existent institutionalisation process does not sufficiently incorporate norms and values that strongly support migrant workers rights protection. What resulted from this process of institutionalism is that identities that were adopted by individuals and institutions responsible for policy making do not fully recognise the protection of migrant workers. It assumes therefore that it may be difficult for sending countries with similar impeding conditions to consolidate a working coherent migrant workers policy at the regional level with other member countries of conflicting ideas.

From these hypotheses the central patterns can be extracted from the case in order to arrive at some main indicators of this thesis. The key component of these preliminary hypotheses therefore consists of institutions, their norms and values and the identities they create within relevant member countries' decision making at the domestic and regional level. The significance of these notions will be further revealed in latter sections of this chapter. From the notion of "constraints" spoken previously it is assumed that "constraints" will only become "constraining" to individual's actions through a cognitive process. This involves rational considerations of what actions actors should take and what they see as their priority or preferences. In light of this, it is therefore important that both two level games and sociological institutionalism are discussed around the premises of rationality, interest and constraints in the context of actors' cognitive processes.

### **III.1.1. The Utilisation of Two Level Games and Sociological Institutionalism**

From what has been pointed out in previous sections the integration of both two level games approach and sociological institutionalism is vital in this research. Two level games allows the view that actors within a foreign policy table received pressures from both regional and domestic levels which provided constraints from achieving the desired outcome. These pressures are not only constituted by preferences of state actors, but also non state actors. In the thesis this refers to constraining actors other than the government within the domestic and regional politics including individuals or groups, governmental or societal actors.

Sociological institutionalism views the process of foreign policy making from the view of sociology of policy decision which allows extrapolation on the role of institutions as well as institutionalised norms and values in providing constraints. Sociological institutionalism defines the process from which institutions and their environment affect the practice of members' decision making. On the **first level** of the analysis the institution refers to that of the regional level of Southeast Asia, which includes ASEAN and other governmental and societal institutions within the region. On the **second level** of the analysis the institutions in question refer to that of individual states which involve the government, the people and societal actors. This means that when looking at Indonesia and the Philippines the inquiry will need to take into account the influences of their social environments comprising of governmental and societal actors.

## III.2. Analytical Tools of Two Level Games and Sociological Institutionalism

### III.2.1. The Work of Two Level Games Approach and Sociological Institutionalism

As previous sections have suggested, the approach that will be most suitable to explain and examine this phenomenon is the two-level games approach as such developed by Robert Putnam. Emerging from previous efforts of examining international and domestic politics linkages (Rosenau 1969), Putnam's approach is based on the two levels present in international agreement. **The first level** represents the international bargaining table where policy makers negotiate the agreement with foreign counterparts, whilst **the second level** involves the discussions over the agreement made at the international level with domestic constituents before they can ratify the agreement (Putnam 1988, 434). These two levels are equally significant and need to be considered simultaneously by negotiators on the negotiating table for international agreement.

Sociological institutionalism is important as an analytical approach as it offers tools to reveal the influence of social forces to particular foreign policy outcome. For the case in this thesis sociological institutionalism helps to support two level games approach by adding new dimensions to the analytical framework. The approach allows the analysis of two level games to include different "levels" of influence that are significant in determining the processes of foreign social policy making in the case of Indonesia and the Philippines. Whilst two level games approach reveals domestic and international influences that may have postponed the establishment of a coherent policy to protect migrant workers in ASEAN, sociological institutionalism sheds light on the substance and the workings of these constraints in relation to foreign policy behaviour of the two policy relevant member countries.

Previous sections have pointed out gaps in the analytical frameworks suitable to analyse the case in this research. It is important that the approach developed in this research presents a form of modification of the two level games approach that would account for the four analytical gaps mentioned above. As explored previously a modified version of two level games is needed to account for the intricate nature of the case in hand.

The two level games assumptions drive the analytical framework used in this research to define its starting point from the two levels of the international negotiation; the individual state level, and the international level. From the individual states level the focus of this enquiry is set on domestic politics within Indonesia and the Philippines, while the international level referred in this case will be centred on the ASEAN and other institutions at the regional level. From this elaboration two level games remain on the official negotiating tables and do not offer more explanation into what actors bring into the table. Two level games approach sees that it is the pressure coming from these conflicting interests that provide pressures for leaders and foreign policy makers. Although two level games is essential in deciding on the influential levels of analysis for the framework, to an extent tackling the question of “what” and “who,” it does not satisfactorily provide the tools to investigate the “why” of the research question. In order to further see what and how the pressures create constraints for national leaders one requires an analytical tool that not only recognises the dynamic endogenous nature of interest and preferences to political processes, but also one that will be able to better examine the influence of non-state forces. In modern international politics non-state or societal actors do not only include leaders, governments and the ruling party, but also civil society groups, academics or other individuals. Their interests also vary according to political processes and interactions with themselves or within governmental institutions. This area is where sociological institutionalism comes in.



### **III.2.2. Towards a Two Level Sociological Institutionalism**

The function that two level games approach play in this research is to enable the definition of significant levels of actors that are policy relevant in this case, revealing the possible importance of non-state actors to government policy making. The approach aids the categorisation of these actors into two areas of analysis, domestic area, within the Indonesian and Filipino domestic politics and the (international) regional area within the ASEAN membership. From these two areas of analysis sociological institutionalism leads the framework of the research to focus on institutions or actors, identities and discourses.

The discussion here takes the assumptions of both two level games and sociological institutionalism to see that institutional discourses constituted policy actors in establishing coherent policy framework to protect migrant workers within ASEAN. On the case in this thesis, two level games approach and sociological institutionalism inform the view that; institutions within the national and regional level influence policy actors by shaping and altering what they see as their identities, thus, determining actors' interest and action, including policy making. The approaches therefore assume the importance of three components involved in this social phenomenon. The institution is important for many different reasons as was explained previously, but in particular because it defines meaning for policy actors and determine their identities and interest. Other than institutions the subject regarding identities is also discussed in this research. Identities in this sense are discussed with reference to the effects of institutional influence to the members of their social environment. Another aspect that needs to be discussed touched upon the process side of the social phenomenon. It entails the mechanism in which institutions internalise their norms and values to policy actors in a discursive manner, hence involve discourses. These aspects of

institutions or actors, identities and discourses are what then determine the themes guiding the discussion in this research.

### **III.3 Operationalization of Two Level Sociological Institutionalism**

Prior discussions in this chapter points out that main indicative components of sociological institutionalism approach are useful to aid two level games' framework in order to arrive at a satisfactory analytical framework for the research. These components guide the enquiry by way of determining the themes of discussion within the two level games approach. This section will elaborate on each themes and their position within the two level games with the aim of arriving at the operationalisation of the combined analytical framework.

#### **III.3.1. Institutions at the Two Level**

The **first theme** that guides the discussion in this thesis is that of **institutions**. Institutions in this regard refer to the relevant agents and actors that play part in the unfolding of the case in this thesis. This means that the theme drives the thesis to look into relevant governments, ASEAN bodies and actors within or outside the state dealing with the protection of migrant workers. Bureaucratic agencies, executive bodies, legislatives, NGOs and interest groups will also be discussed within their structure and routine in the organization of the state. This is done because these structures and routines themselves can determine policy making by facilitating the definition of interests. The discussion on the theme of institutions seeks to see the nature of pressures these institutions can distribute by analysing those that are relevant in decision making process relating to migrant workers policy. The focus of this discussion revolves around specific functions of these institutions

and how effective these functions are implemented with regards to issues of migrant workers protection. The definition of what norms and values are embedded and promoted by the institutions is also discussed as well as what ideas and identities they are inspiring.

The theme of institutions also drives me to look at the dynamics of institution development from one government to another by observing relevant states between the time periods of 1999 to 2009. By doing this I hope to reveal if and how differences in ideologies, approaches, bureaucratic structures, routines and procedures resulted in significant changes in the nature and function of the institutions, and consequently to what extent this affects the outcome of policy making. The aim of looking close into institutions in this manner relates to the need to gauge the extent of which political institutions in its substance and design influence actions in a political democracy (March and Olsen 1984).

At the two level games' domestic level, institutions fall into two classifications; societal actors and government actors. Within the Indonesian domestic politics, the relevant societal actors include the voices of the private sector in the form of migrant workers sending agencies or PJTKI and NGOs handling migrant workers, women (Ford 2005; Yazid 2006),<sup>12</sup> human rights issues and trade unions (Migrant Care 2009; Komnas Perempuan Indonesia 2009; Ford 2006).<sup>13</sup> The government actors within the Indonesian domestic area involve factions within the parliament, Department of Foreign Affairs, Department of Labour and

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12 Migrant Care and Solidaritas Perempuan are responsible for the drafting of the then controversial Law No.39/2004 on the Protection and Placement of Indonesian Migrant Workers which also supported the establishment of the Indonesian National Board for the Protection and Placement of Migrant Workers. When this occurred the two NGOs were initially a part of a larger NGO namely KOPBUMI (Indonesian Labour NGO Consortium). Nowadays they are actively involved in advocating policy formulation to the Indonesian government and a part of the group of Indonesian NGOs which ASEAN Task Force of Migrant Workers ask opinions of in their policy formulation.

13 The National Commission for Women and Children was established in 1998 as an independent body of protection which was reinforced in 2005 to gain further independence from the government, despite being established by the Suharto regime. Together with the Human Rights Watch Group (HRWG) and ASPEK (which was a part of KOPBUMI with Migrant Care and Solidaritas Perempuan) they are the most vocal and prominent in advocating migrant workers rights within Indonesia while at the same time actively involved in the ASEAN Migrant Workers working group offering suggestions for the formulation of an ASEAN framework for migrant workers through the Task Force for ASEAN Migrant Workers.

Employment and the National Board for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI). Societal actors in Indonesia are largely supported by NGOs on human rights, women rights and specifically migrant workers and labour rights. The most relevant of these NGOs include Migrant Care, Human Rights Watch Group (HRWG) and the National Commission for Human Rights as well as the National Commission for Women and Children. Other societal actors include the opposition party's representative which most of the time would be the Labour-focused Democratic Party PDI-P. Little religious affiliated organisation is involved in the Indonesian domestic politics with regards to migrant workers issue, which is the opposite of the case in the Philippines.

Similar aspects equally can be found in the domestic politics of the Philippines. The governmental actors in the Philippines consist of the Department of Foreign Affairs and the Department of Labour. The Philippines version of Indonesia's BNP2TKI, the Philippines Overseas Employment Agency (POEA) also has a big influence of the governmental policies, both domestic and foreign. Different from the Indonesian mechanisms, the Philippines has a set of welfare offices to attend to the needs of these migrant workers abroad, such as the Overseas Workers Welfare Abroad (OWWA) whose office extends nearly as far as the movement of Filipino workers themselves in the world. In terms of societal actors, the Philippines' large number of migrant workers makes for an expansive network of NGOs and other organisations. There are two major groups that are most relevant in this case; NGOs that are focused on migrant workers welfare from various views; advocacies based on gender, human rights or political rights; and NGOs that are working under the auspices of the Church. NGOs of the first type are numerous in the Philippines. Those that are chosen in this research are those with active role in advocating workers protection to agencies in the government as well as regionally on the ASEAN level. These include Kanlungan, Centre for Migrant Advocacy, Migrante, Scalabrini Research Centre and PhilRights. On certain cases the

Church themselves also played an important part for the protection of migrant workers. Community organisations under the National Council of Churches in the Philippines (NCCP) are also policy relevant in migrant workers protection. Other societal group that also play a part in this are academics, who, within their own groups are also active in NGOs, or in providing consultations to various governmental actors.

Actors within the regional level in this case include governments of Malaysia, as the biggest migrant workers receiving country in the Southeast Asian region, regional level ILO and the ASEAN itself as a regional level institution. The government of Malaysia in this thesis will be discussed as an actor at the regional level. Although in its form this actor is a state actor, within the two level frameworks the pressure that the Malaysian government is putting is a part of regional level constraint for both Indonesia and the Philippines.

### **III.3.2. Identities at the Two Level**

The **second theme** that the research is going to be looking at is **identities**. Identities are assumed to be the creation of both institutions and the set of norms and values embedded within it. On this basis, the theme will cover how migrant workers and their attributes are identified within the policy making institution and how migrant workers are portrayed by the government or relevant societal groups. From this theme the research can benefit to reveal the extent of which migrant workers identity is recognised by the governments; how are they recognised, how their rights are acknowledged and whether these treatments fit the needs of the workers themselves.

Identity formation here, as suggested by sociological institutionalism, is determined by actors' perception of their role in their social environment. This perception of role depends on

the extent actors intend to adopt institutional norms and values, which relates to how they perceive the significance of their association with the particular institution. Identity formation in policy making also relates to how policy makers construct the identity of the people they are making the policy for. From the construction of this identity an assumption of their interests and preferences is attached by policy makers as the proper preferences to be considered in the policy proposal.

How “imagined” preferences are defined therefore determined the form of policy proposals that national leaders make. It is thus important that actors’ perception and the existence of prominent norms and values need to be evaluated in order to see what actually informs how actors see as the “appropriate” action. This relates to definition of identity, particularly to how actors and institutions officially identify their role and goals with regards to a particular issue. Role identification in institutions defines the limits of their interests and preferences and projects the trends of their objectives for future periods. Institutionally these identifications both inform and define the norms and values members should instil in their institutional actions. In order to do this the enquiry requires the inclusion of further investigations on official statements as well as policy aims and purposes which indicate actors’ perception towards the issue and their role in it. An equally important focus of investigation in this thesis relates to the existence of normative guidance that can impose certain identity and thus “appropriate” action to actors. This can take the form of working human rights protection mechanism, labour rights law and other workers protection clauses. The effective existence of this normative guidance signifies support from actors’ social environment to adopt particular identity with regards to the protection of migrant workers. Following the assumption of two level games, in this research the search of these elements will be conducted within each domestic level of the Philippines and Indonesia, as well as within the regional level of Southeast Asia.

Aspects within Indonesian domestic politics that are determinant of identity formation in the case are largely related to how the migrant workers are perceived from different point of views of actors. What the research will observe is how Indonesian migrant workers (especially those abroad) perceive themselves and their identity, as a part of the Indonesian nation, or more towards fellow foreign workers, despite different nationality. The focus will also look at how governmental and societal actors perceive migrant workers. For governmental actors, in particular, do they perceive migrant workers equally as their other nationals, especially abroad when they are most estranged and vulnerable. Do governmental actors see migrant workers as valuable assets or as unemployment that is better absorbed somewhere else? Societal actors seen in this case mostly perceive migrant workers as needing protection, but the extent of this will be seen further, in particular in the height of Indonesia's ever-changing presidential influence. How governmental and societal actors see their position relating to migrant workers protection is also vital to focus on as it determines how these actors see their roles in the matter and consequently what actions they see as "appropriate" to take. Whether they see themselves as protector of the rights of migrant workers or too important to deal with "petty" problems of domestic workers will decide on whether or not actors support the policy to protect these workers. Investigations on these are found on Chapter V.

What also determines the formation of supportive identity to migrant workers protection is whether or not appropriate normative structures are present. These structures are important to be included as a factor in the analysis as they function to socialise and impose the adoption of particular identity. It is because of this that the presence of a working human rights mechanism along with effective labour rights and protection laws in the country is important for the adoption of workers protection norms, and thus, preferences and actions. Whether or not such normative structures exist in Indonesia and how they influence actors'

perception with regards to the appropriate regulation to protect migrant workers is therefore included in this research. The normative structures investigated in this thesis encompass the major legal texts governing Indonesian labour rights as well as existent regulative mechanisms to protect migrants and human rights.

This research examines whether identities that are pro protection policy are adopted proactively or reactively with regards to specific trends, such as, for example, crises situation and presidential campaigns. In Indonesia these adoptions can be seen within the campaign promises of presidential candidates as well as their official statements, and in their official mission for societal actors. At the same time the idea of identity ties closely to the next notion of discourse. How actors define their particular identity determine what type of discourse they seek to establish with regards to the case. Discourse relies on the notion of identity as identity defines the “what” of the subject as a matter of substance and discourse define “how” it is brought forward.

Issues relating to researching the notion of identities of Filipino migrant workers concern similar aspects to the case in Indonesia. Detailed examination of such concern is included within the discussion of Chapter VI. Again here the research seeks to look at how governmental and societal actors within the Philippines perceive their role in the issue and migrant workers themselves. The research investigates how governmental and societal actors see migrant workers as a group that needs protecting at all, and whether the actors see their role as ensuring workers protection or if they perceive other roles to be more important. In comparison to Indonesian migrant workers it will be important to see whether migrant workers are identified as of higher, lower or the same class as other members of the work force. This can be seen within governmental and societal actors’ statements as responses on a specific case or crises or concerning protection policy for workers in general. What is examined on the element of identity is the way Filipino workers perceive themselves in



relation to their national government; whether or not they associate more as Filipinos, foreign workers or any other forms of identity. Consequently this drives the research to look further into how Filipino workers abroad see their rights and obligations particularly with regards to the roles of Filipino government in implementing measures of protection.

As previously stated the role of norms and values is important in informing actors' perception and consequently determining their actions. A working normative structure that informs "appropriate" actions regarding migrant workers protection will be significant in the case, in particular if the structure is regarded highly by governmental and societal actors involved. Because of this I will have to look at the Filipino human rights mechanism, labour protection laws and any welfare clauses touching upon the protection of migrant workers. Whether these mechanisms are in place and working efficiently will inform the research on how governmental and societal actors perceive migrant workers protection. An insight as to how both governmental and societal actors see the role of ASEAN as a vehicle for the protection of migrant workers; whether it is significant, or whether bilateral agreements are more efficient, and whether the Philippines perceive themselves as a part of the "ASEAN community" and able to trust the association to deal with their concerns.

On the regional level, similar to matters in Indonesia and the Philippines identities are dependent on actors' perception of their role and also their preferences with regards to the regional association as well. In relation to this, the thesis also includes a degree of investigation into how the Malaysian government perceives migrant workers; as merely cheap labour, a significant addition to their workforce or as diplomatic responsibility that needs protecting. This defines their interests in the establishment of a regional protection policy for these workers; will they want a tighter policy to protect workers or a loose policy so they can reap workers' economic benefit? What is also important to see is how the Malaysian government regards ASEAN as a regional association; whether it is a significant

venue to achieve their interests or not. This then determines Malaysia's identification with the ASEAN community as well as the extent of which the government is willing to participate, cooperate and negotiate in the association.

Identity also plays a part in the regional level. ASEAN, more than other association, supports a more "community-based" approach with consensus-based decision making. It is assumed that members of this community determine how the community itself takes form and takes action. In this case, for ASEAN to come up with a coherent regional policy to protect migrant workers its members have to see itself as a part of the "community" and trust in the association's ability to act on and fulfil their concerns, as suggested by Anderson with his "imagined community" (Anderson 1991, 5).<sup>14</sup> It is therefore important for this research to examine how Indonesia and the Philippines perceive their position in ASEAN as well as see the extent of which the association is important for the countries, particularly to protect their migrant workers.

The regional level ILO most likely sees themselves as defender of the workers rights and assume their position as a critique towards governments and their regional association. It is important to see how this identity is adopted with relation to what this organisation sees as the responsibility of the government. The thesis includes a discussion on how the regional ILO perceive the extent of their responsibility; do they see themselves responsible on the government level, or on the societal level through support communities, through policy levels or proactive measures on the community level? Such examination benefits the thesis by providing not only an overview on how institutions at the regional level identify themselves but also to determine whether these identities conflict with those of ASEAN members' governmental and societal institutions' enough to provide constraints to their policy making.

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<sup>14</sup> Benedict Anderson, as already mentioned in p.39 of this thesis

Identity formation concerns issues of shared norms and values and their socialisation in the institution. Identities on the ASEAN level relates closely to how member countries regard their participation within the association; whether they see themselves as a part of the community and whether ASEAN is seen as an important vehicle to achieve their benefit at the regional level, in particular in the case of migrant workers. These assumptions can be seen in Chapter V and VI, discussing on the case of Indonesia and the Philippines in detail. In Chapter IV what will be looked at is how ASEAN perceive their role in the case to protect their members' migrant workers. Does ASEAN see itself in their directives and regulations as a protector of the regional workers rights or does it perceive itself more as a political economic cooperation? Or is there any normative structure within ASEAN that redefines its identity on the protection of migrant workers? I can see this through the existence of social clauses within the region's treaty as well as their follow up to achieve a working framework. An investigation on whether or not the protection of the region's migrating workers is a priority for the association is important to be conducted in this case. This can be found in the frequency that the issue has been discussed at the general assembly level and the number of times a proposal towards a protection policy has been granted by ASEAN. By looking at ASEAN's statements and directives as well as how it responded on this issue a sense of identity can be depicted. Equally important in this case is the revelation towards attitudes and sentiments towards human rights mechanism and appropriate labour laws to protect migrant workers, especially whether such mechanisms are highly upheld or not.

### III.3.3. Discourses at the Two Level

The **third theme** in this matter refers to that of **discourses**. For an institution to successfully conduct institutionalisation of its norms and values to members it requires a series of discourses that inspire application of certain routines and implementation of institutional myths or symbols. Discourse here refers to mechanisms within interactions and communications of members in the institution that induce understandings and inspire the adoption of institutional norms and values.

The discursive side of this enquires into what extent and how the processes within bureaucracies, routine procedures, symbols and approaches affect the adoption of role and action by members of institutions. Discourses are assumed to vary by actors that are involved, the type of interactions that were conducted and the type of information being shared. At the same time discourses also represent a tool utilised by parts of the institution to form members' views, informing their identities in order to ensure pursuit of a particular course of action. Specific ways of articulation and concluding in this case will also suggest specific identities and action towards members. In other cases the disuse or ignorance of particular issues from the discourse similarly suggest formation of certain identities instead of others, and as effective to suggest the adoption of particular action by members. To unravel this theme it requires a further look into legislations and regulative mechanisms set for the members of institutions as well as observing interrelations between bodies and members of the institutions. This theme is also subject to a discussion on particular usages of discourse at institutional level. This led the research to include further analyses on what discourse has been present surrounding migrant workers protection policy at the level of ASEAN and their major workers sending countries as well as whether the issue has been neglected with the placement of other discourses. The research in this thesis seeks to reveal how these processes

lead to the implementation of institutional norms and values to members and arrive at the ideas and identities that the first theme suggests.

The matter of discourses concerns the imagery that actors project on the issue to the public in particular. The discourses that occur in the Indonesian domestic area are included within socialisation and coordination efforts that can be seen in official or press releases on regulative mechanism on the protection policy of migrant workers. On the issue of a regional policy to protect migrant workers this relates to campaigns, slogans and socialisation efforts by government leaders or societal actors about migrant workers and consequently their rights. Are migrant workers projected frequently as heroes or as victims, significantly in need of protection or not a concern for actors to protect? How actors project social rights and their protection to the public also adds into the form of discourses on the case. From governmental actors this includes presidential or ministerial directives on how regulations about migrant workers protection are applied. Both of these can take the form of written statements or statements made in public, public campaigns or slogans directly on a particular issue or as a form of responses to the action and statements of other actors. On particular cases, discourses occurs surrounding regional protection mechanisms at times when crises involving migrant workers, most of the time regarding violence or death against them, occur within the period of study. On these periods of crises discourses become intensified, creating a much more frequent release of statements relating to actors' positions and official demands with regards to the crises. Governmental directives on certain measures may also be present in a more reactionary sentiment to the crises at hand, although similar trends may also occur in the heat of a presidential campaign to expand more votes. Special ministerial meetings which include consultation sessions with other governmental and societal actors can also be the venue for this type of discourses. Further discussion on these is included in Chapter V.

Discourses surrounding Filipino workers, similar to the Indonesian case function as a tool to depict a certain image of migrant workers and the issue of their protection to the public. Other than campaigns, slogans and other forms of official public socialisations discourses can be seen in official government statements and directives as well as various societal actors' statements of position and demands to the public. Relevant to the notion of identity, the discourses that surface are not only driven by certain identification of migrant workers position but also project these types of identities. In the Philippines there have been campaigns to instil migrant workers identity as "heroes."<sup>15</sup> If the identity of migrant workers is that of a victim, a more emotive form of discourse will be taken to evoke public's pity, while the identity of hero would see a discourse that encourages national pride. Identity here serves as the substance that defines how the discourse takes form. By looking at legal texts, directives and statements of governmental and societal actors the research will be able to see to what extent migrant workers needs and rights for protection is projected. Are their economic benefits more widely projected, or their social position that sits at the centre of these discourses? The research examines this from the statements and actions coming from governmental and societal actors in the Philippines, both on a proactive stance and as reactions to particular crises involving migrant workers themselves, or the general socio-political economic condition of the country. The possibility that crises and certain urgent conditions affect the degree of discourses that arise on migrant workers protection will also be explored. This exploration can be found in Chapter VI of the thesis.

Main discourses in the issue of regional protection for migrant workers in the regional level revolved around several concerns; one, on whose responsibility it is to protect worker, individual members through bilateral agreement or ASEAN as a regional association, and

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<sup>15</sup> The discourse of migrant workers as heroes was firstly popularised by the statements of President Aquino. The discourse of "New Heroes" first appeared under the President Aquino when she addressed Filipino workers in Hong Kong in 1988 stating "Kayo po ang Bagong Bayani" which means "you are the new heroes" to the workers (Fajardo 2011, 84)

two, whether ASEAN, who has been doubted to still be significant, is going to have sufficient power to impose on policies to state members at all. These will be able to be found in the regional association's press releases and official statements, in particular surrounding matters of regional policy to protect migrant workers. Previous discourses regarding the image of migrant workers and their rights, as such present in the level of Indonesia and the Philippines, will also be important to be looked at on the regional level to see the extent of their influence. The association's response to the demands of migrant workers protection policy will depict the type of discourse applied in the association. This is especially important to look in the Malaysian government's directives and regulation as it will reveal whether migrant workers and their issues are portrayed in a particular way to the public; are they portrayed more as a factor of production, significant developmental tool, or as members of the community that needs protecting.

#### **III.4. Mechanism of Operationalisation**

Previous elaboration on operationalisation presents the research with a modified form of two level games approach that allows for a combination of two level games and sociological approaches as a relevant framework in the research. Both approaches indicate that what the investigation in this thesis needs to involve, which as discussed focused on examining institutional identities and discourses within actors of the regional and national level in the case. To further clarify and highlight the working assumptions in this research as well as systematise the framework within discussions in the next chapter it is helpful that the mechanism of operationalisation be embodied in the next table.

This mechanism of operationalisation equally determines the division of the empirical chapters to come in this thesis. The empirical section of this thesis consists of three chapters.

The division of these chapters is determined by the approach of two level games, where there are two levels in an international bargain; the international (in this case regional) and the domestic. The discussion within each chapter is guided by themes provided by sociological institutionalism. The first chapter seeks to portray the regional side of this dynamic by exploring the institutions, identities and discourses on the two level games. The second and third chapter consequently discusses the domestic side of the two level games by looking into institutions within both Indonesia and the Philippines. Notions of identities and discourses will also be discussed in these chapters to explain what led to the application of regional policy on migrant workers protection. All of these chapters will focus on the development of events between 1999 and 2009, although some historical insights from previous periods may be added.



	Institution	Identity	Dis
Regional level	<ul style="list-style-type: none"> <li>• ASEAN</li> <li>• The Malaysian Government</li> <li>• ILO</li> </ul>	<ul style="list-style-type: none"> <li>• ASEAN as important regulative body</li> <li>• Migrant workers as economic resources</li> <li>• Protector of regional migrant workers</li> <li>• Existence of human rights and labour rights mechanism</li> </ul>	<ul style="list-style-type: none"> <li>• Gove</li> <li>• Natic</li> <li>• of pr</li> <li>• Com</li> </ul>
Domestic level	Governmental Indonesia: <ul style="list-style-type: none"> <li>• Dep. Foreign Affairs</li> <li>• BNP2TKI</li> <li>• Department of Manpower</li> </ul> The Philippines: <ul style="list-style-type: none"> <li>• Dep. Foreign Affairs</li> <li>• POEA</li> <li>• OWWA</li> <li>• Dep. Labour and Employment</li> </ul>	<ul style="list-style-type: none"> <li>• ASEAN as important regulative body</li> <li>• Migrant workers as economic resources</li> <li>• Protector of migrant workers</li> <li>• Existence of working human rights and labour rights mechanism</li> <li>• Existence or acknowledgement of migrant workers welfare mechanism</li> </ul>	<ul style="list-style-type: none"> <li>• Gove</li> <li>• Migr</li> <li>• Migr</li> <li>• Com</li> </ul>
	Societal: Indonesia: <ul style="list-style-type: none"> <li>• Human Rights Commission(s)</li> <li>• Migrant Care</li> <li>• Opposition</li> <li>• Labour Union</li> <li>• Academic researchers</li> <li>• Recruitment Agents</li> </ul> The Philippines : <ul style="list-style-type: none"> <li>• Migrante (Migrant Workers NGO)</li> <li>• Phil Rights (Human Rights)</li> <li>• Centre Migrant Advocacy</li> <li>• Academic Researches (Scalabrini Research Centre, Uni.Philippines)</li> <li>• Church organisations</li> </ul>	<ul style="list-style-type: none"> <li>• ASEAN as important regulative body</li> <li>• Role of other actors; ASEAN, governments and other institutions in MW protection</li> <li>• Perception towards fellow societal institutions</li> <li>• Manner in which migrant workers welfare is best achieved</li> </ul>	<ul style="list-style-type: none"> <li>• Who</li> <li>• Migr</li> <li>• Natic</li> <li>• prote</li> <li>• MW</li> </ul>

## **CHAPTER IV**

### **THE FIRST LEVEL GAME: ASEAN, MALAYSIA AND THE ILO ON A REGIONAL POLICY FRAMEWORK FOR THE PROTECTION OF MIGRANT WORKERS**

#### **Introduction**

As has been clearly outlined in the previous chapters, particularly Chapter I, the main objective of this thesis is to analyse why it has not been possible within ASEAN to set up a coherent migrant workers policy, which includes the protection of the rights of these workers. For this effort the purpose of this particular chapter is to present the result of data gathering and analysis on migrant workers protection policy in ASEAN from the level of regional interaction. These results will further lead the analysis to extract characteristic institutional identities and discourses at the regional level that may influence the policy making process with regards to migrant workers protection. The aim of this chapter is to further investigate the extent to which institutions, identities and discourses at the regional level of ASEAN determine the formulation of a regional policy framework to protect migrant workers. In this chapter the institutions that will be examined are ASEAN itself, the Malaysian government as the major workers receiving country, and the regional International Labour Organization (ILO) which plays the part of consulting governmental actors at the regional level. The chapter covers three main sections; the first provides a contextual background of regional level conditions in ASEAN with regards to migrant workers policy. A review on other

regional organisation is also included as a comparative study. The second section assesses identities and discourses at the regional level, looking into ASEAN, Malaysia and the ILO's position in detail. The third section presents a summary of analyses in this chapter which suggests that the identities and discourses of regional level institutions do not offer sufficient support for the development of norms relating to migrant workers protection.

## **IV.1. Contextual Background of the Regional Condition**

### **IV.1.1. The Puzzle of ASEAN Migrant Workers Policy**

ASEAN carries significant importance in this case. For the past decade the association has been increasingly influential in the international world. Besides gaining attractiveness to more countries in the region, ASEAN has been central in international issues regarding environmental disruptions and human rights with cases of forest fires and the Myanmar conflict. The association's structural development has also shown establishment of supportive institutions of actions with wider specificity. The regional institution of ASEAN is important to be discussed as a regional regulative body that is equipped with the mechanism to govern migrant workers protection and also the association where the major sending and receiving countries are members. The fact that ASEAN member countries are mostly developing nations and the association has a distinct mode of interaction in "the ASEAN Way" makes it a unique regional grouping to look into. Studies on ASEAN are therefore important for the wider studies of regions and regionalism. As it focuses on the dynamics in policy making processes of migrant workers protection this thesis, thus does not only present relevance for the studies of regions, but also for the studies of foreign policy making and international relations in general.

From an economic point of view a form of regulation to govern workers is important for Southeast Asia. The growth of Southeast Asian manufacturing sectors which started in the 1980s and its development requires a steady and smooth supply of regional migrant workers (Hughes 1988), which subsequently demands a regulative framework to ensure it (Firdausy 1996; Stalker 2000; Wickramasera 2002).<sup>16</sup> With the sending and receiving of workers increasingly developing into large businesses, the requirement for countries to diminish possible social, political and economic hindrance to the business has equally increased.

Whether it is relating to economic, business, welfare or human rights, the issue of migrant workers rights has been a permanent subject for the Association of Southeast Asian Nations (ASEAN). On one side of the spectrum, ASEAN has to manage issues and policies that lie close to the business and economic benefits of migrant workers which are of interest to workers receiving countries. On the other side ASEAN needs to also cater to the needs of workers sending countries that have entrusted the welfare of their workers to foreign authorities and are in need of regulative mechanism to maintain and protect workers in the region. Workers sending countries such as the Philippines and Indonesia currently supply close to 20 million workers in the Southeast Asian region (Mathi 2008). Main issues with regards to the welfare and protection of migrant workers in this region revolve around the protection of their rights, especially against the rising level of violence migrant workers suffered. According to data gathered by the International NGO Forum for Indonesian Development (INFID), in 2007 a total of 86 Indonesian workers died (71 in Malaysia and 15 in Singapore) with a further 144 workers experiencing cases of violence, some leading to death. This does not include incidents of indecent working conditions, illegal holding of passports, violence and arrests which followed mistreatment to migrant workers and forced

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<sup>16</sup> Southeast Asian migrant workers have been one of the region's important economic actors, sent to different regions in the world. Through the 1950s up to the 1970s these workers were sent to United States and industrial countries in Europe, and to the Middle East starting from the period of the 1973 oil boom.

deportations (International NGO Forum for Indonesian Development INFID 2008). If not dealt with properly, these violations will not only harm the workforce who are working abroad but also cause disturbances to the management of migrant workers around the region. In the longer term, this condition will potentially affect Southeast Asian labour-intensive manufacturing sectors as well as the Southeast Asian economy.

The tackling of this migrant workers issue has been a concern for ASEAN since the process of formulation of the Hanoi Plan in 1998. At this particular time member countries declared mutual acknowledgement of the dire status of migrant workers and agreed upon the need to come up with a coherent regional policy to protect migrant workers (The Philippines Office of the Press Secretary 2005; ASEAN Secretariat 2004).<sup>17</sup> The issues regarding migrant workers protection were then embodied in the ASEAN Vision 2020 established in 1997, which is further developed under the Hanoi Plan 1998 where a roadmap was produced to design what was then known as the Vientiane Action Programme in 2004 (The Philippines Office of the Press Secretary 2005). Under this Programme the member countries committed to establish an ASEAN Community which includes instituting a further elaborated instrument for the protection and promotion of migrant workers. In 2007, the member states of ASEAN signed a Declaration for the Protection and Promotion of the Rights of Migrant Workers. This declaration is the most that the member states have achieved in the specific regulation, despite having to initiate it with the establishment of Hanoi Plan in 1998. Despite this fact, in a period of 13 years afterwards, the regional cooperation has still been unable to put together a coherent and efficient regional policy framework for migrant workers' rights.

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<sup>17</sup> The ASEAN Vision 2020 views ASEAN as a "concert of Southeast Asian Nations outward looking, living in peace, enjoying stability and prosperity, bonded together in partnership in a dynamic development and in a community of caring societies." The Hanoi Plan was developed as a move forward from the ASEAN Vision where a blueprint towards a more concrete cooperation in economy, environmental protection, sustainable development, improvement of social and human resources as well as the coordination of efforts to dampen the effect of the financial and economic crisis. The Vientiane Action Programme redefines ASEAN member countries' intention of establishing a durable and active ASEAN Community through the creation of three pillars; ASEAN Security Community (ASC), ASEAN Socio-Cultural Community (ASCC) and the Recommendations of the High Level Task Force on ASEAN Economic Community.

ASEAN so far has achieved little success in addressing the issues regarding regional regulation for migrant workers, whether through direct actions or policy framework. Recent establishment of an ASEAN Human Rights Body under the ASEAN Political and Security Community (APSC) shows exactly this. Under APSC migrant workers will be dealt with within a security and political framework which increases misinterpretation of the societal aspect of the issue (Paris 2001, 98).<sup>18</sup> In addition, some indications of worker regulations under the AEC and AFTA (ASEAN Free Trade Area) see migrant workers as another factor of production, leaving little room for the social and political rights of migrant workers to be addressed in ASEAN (Mathi 2008). To this date not even the ASEAN NGO alliances under the Task Force for Migrant Workers have been successful in pushing a viable policy framework for the issue, and as we have previously seen neither do ASEAN's two major sending countries of migrant workers. More on these countries will be discussed further in the next chapters.

The main objective of this thesis is to analyse why it has not been possible within ASEAN to set up a coherent policy with regards to migrant workers, specifically a policy regulating the protection of the rights of migrant workers. Here the research asks whether the particular issue uniquely belongs to ASEAN or whether this is a common problem for similar regional associations. The need arises from this point to compare the case of ASEAN with similar cases in other regional associations. How other regional associations deal with matters of regional policy framework for migrant workers will be important to look at in order to see if similar difficulties are reoccurring in other regional associations. From this comparative

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<sup>18</sup> According to a matrix compiled by Roland Paris, the issue of migrant workers here is interpreted as a matter of human security as it involves military or nonmilitary threats or both towards environmental and economic security to the survival of societies, groups and individuals and this is placed at the last cell. The first cell in this matrix is that of traditional national security, involving a conventional realist approach to security studies that focuses on military threats on states.

look a more comprehensive view will be achieved towards the gravity of the issue in this case for ASEAN and its member countries.

#### **IV.1.2. Experiences of Migrant Workers Policy in Mercosur and the EU**

##### **The Experience of Mercosur**

Among other regional institutions in the world, Mercosur has some of the closest characteristics with ASEAN. Mercosur's members are similarly diverse in cultural and political sectors and also from their territorial size and socio-economic system. Although their histories are also similarly influenced by independent struggle towards colonialism, both ASEAN and Mercosur's members are largely diverse in terms of social and economy (Patarra 1999; Wilson and Mei 1999; Bayoumi and Mauro 2001; Moncarz and Vaillant 2010). Trends of migration within Mercosur are also similar to ASEAN, sending workers to more developed countries such as the United States and Europe and within the region of Mercosur itself, particularly more industrialised destination countries such as Argentina and Brazil (Patarra 1999; Plummer 1995; Alvarado and Sanchez 2002; ILO International Labour Organisation 2004). The recognition that labour migration provides a great support to Mercosur economies brought demands for a social protection mechanism within the Mercosur Trade Agreement. Although within the Asuncion Treaty 1991 there was little note on social justice within the effort of including this region in the larger international politics (MERCOSUR 1991), the Ministers of Labour in the four countries who signed the Treaty (Brazil, Argentina, Paraguay and Uruguay at that time) pushed to create a Labour Subgroup to represent the demands of entrepreneurs and workers in the four countries (Patarra 1999; IOM International Organization for Migration 2003; Polaski 2003). This was later expanded to include Bolivia,

Chile and Peru (ILO International Labour Organisation 2006; International Institute for Labour Studies 2008).

The creation of the Common Market Council (involved members' Ministers of Foreign Affairs and Labour) led the establishment of the Social and Political Representative Organ to address differences and diversities in the coordination of the region's macroeconomic and social policies. A Mercosur Industrial Council was set up in 1994 which is incorporated within the Economic and Social Consultative Forum (modelled with the frames of Economic and Social Committee of the European Union) and allows for consulting for the Council. Within these organs labour unions and trade unions are allowed active participation, ensuring the contribution of civil society, and going beyond the basic rights covered in a trade agreement (Polaski 2003). Here it can be seen how the building of Mercosur's economic institutions included demands from societal institutions and businesses with regards to their social protection and labour rights (Compa 2005).

Concerns on labour rights are further addressed when in 1998 Mercosur members signed the Social Labour Declaration from which a Social-Labour Commission was created. This commission consists of representatives of the government, labour and businesses of each sector available, and functions to ensure the protection of labour rights and application of correct measures to achieve this in member states (International Labour Office 2001; Inter-American Development Bank 1999, 30-31). Members of Mercosur must then submit an annual report on how far they have made efforts in terms of the application of the Declaration, including the changing of law and practices, progress, improvement or difficulties in application (International Labour Office 2001, : Article 23). The Commission then reviews the government reports and by consensus examines and analyses the substance within the efforts of application to the Declaration. From this the Commission reports their analyses and develop recommendations on the development of application and fulfilment of



the Declaration (Compa 2005). This form of openness to interest groups in labour rights policy represents more allowance for societal institutions to take part in the institutionalisation of workers' rights protection which involves the reduction of the state's role in the social aspect.

Duina notes that "the construction of regional markets is a social process" (Duina 2004, 373). By recognising the similarities of law making between the EU and Mercosur, Duina notes that Mercosur carries with it strong supranational assumptions as is seen in the law creating their Common Market; article 9 of the Protocol of Ouro Preto states "The Common Market Council will promulgate Decisions, whose adoptions will be obligatory for the Member States" (Duina 2004, 363), which is redefined in article 15 and ultimately 42 which reinstates that "The Laws emanated from Mercosur's organs,.....have an obligatory character" (Duina 2004, 363). Although member states have a permanent representative in the Social and Labour Commission of Mercosur and involved in National Commissions to aid the Commission (Duina 2006), they have shown a conscious effort to allow societal and regional institutions to take over roles and authorities which were their own and be governed by another entity. Through this effort the governments participated in the social process of globalisation and regionalisation, transforming its role and nature in international relations. In Mercosur's case particularly, the Ministries of Labour of the member countries themselves participate actively in ensuring the representation of labour's rights and interests from the start (Duina 2004, 373-374). This suggests that in Mercosur the "state" identity has moved on from the self-centred power-struggling being to a protector of its nationals.

## **The Experience of the European Union**

A similar trend can be seen in the way the members of the European Union (EU) shaped their migrant workers policies. The EU experienced a relatively different and yet intricate development of migrant workers institution. Supranationality is achieved to some extent and common policies are possible through the “three main pillars” which include the common market, where the trade of goods, services, capital and labour are conducted free from tariff and non-tariff barriers; the Common Foreign and Security Policy and Police and Judicial Cooperation in Criminal Affairs (Duina 2004, 362).

The EU population of working age citizens has been decreasing since its establishment. The percentage of elderly people in the past two decades has increased in the EU by 3.7 percent in comparison to only 0.3 percent rise of overall working age population (European Commission Eurostat 2011). This means that intra and inter migration of workers are needed to subsidise areas where working age population is insufficient to maintain necessary economic activities. Creating a working migrant workers policy within the EU means that it needs to ensure that members’ needs of a sufficient supply of workers are fulfilled and assure that no social political or economic problems arise from receiving workers across state borders (Stalker 2002, 171,180). Compared to Mercosur, the original EU member countries do not have large economic, social and political discrepancies. The willingness of EU member states to be regulated by the regional institution represents a progressive state participation in its role and therefore identity transformation. Since the Treaty of Rome in 1957 a concern to ensure the freedom of movement of workers has been shown. This is further strengthened with the Schengen Agreement in 1985 (Castles 2004, 217). In 1988 the Commission of the European Community proposed an abolition of internal borders controls on the movement of people (Huntoon 1998, 425). The Maastricht Treaty in 1992 further

defined the member states common visa policy along with it a classification of which countries would need a visa to enter the EU territory. The Treaty of Amsterdam in 1997 clarifies this last point and further cements an EU policy on migration, the free movement of persons and visas. If in the EU “the migration control is central to national sovereignty and identity” (Castles 2004, 218), member states have then willingly given a part of their sovereignty and identity to the institution. This means that states have to be sure that there is satisfactory coordinated effort in areas of foreign policy, economic relations and human rights which is essential for a working migration policy in the EU for it to replace states social functions to people in its territories (Castles 2004, 874-875).

From the experiences of Mercosur and the EU we can see how migrant workers policy has manifested itself within the institutional framework and has shown several similarities. Both regional associations depict their mutual understanding of the gravity of the issue. At the same time both of the associations’ members agreed to merge sections of their authority with regional level diplomatic institutions in order to provide better management for the regions’ migrant. Mercosur specifically, put great attention towards regulating migrant workers protection. Arguably, in the face of ASEAN and Mercosur, the European Union’s integrative mechanisms are supported by stronger political and economic powers (The World Bank 2012; Monteagudo and Watanuki 2003)<sup>19</sup>. Mercosur, on the other hand, has not only similar political and economical power to ASEAN but also less age than ASEAN. Despite this fact Mercosur still manages to come up with a migrant workers welfare policy that not only facilitates integration of members’ domestic governance system, but is also supported by societal components of their domestic politics.

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<sup>19</sup> European Union by trade is more focused on capital-intensive exports while Mercosur is more focused on labour-intensive products (Monteagudo and Watanuki 2003, 60). Supported by data from the world bank on governance and purchasing power (The World Bank 2012).

Similar degrees of understanding and willingness to cooperate within the umbrella of Mercosur seem to have driven these parties towards integration, leaving behind traditional notions of realist views of cooperation. Under the premises of two level games the case of Mercosur shows that “games” at both international and domestic level arrive at a point of mutual agreement which leads to policy negotiation success and policy framework establishment. This particular pattern provides the case of ASEAN with a valuable lesson as to how to acknowledge and take advantage of the dynamics of international level “games.” The premise it provides is that in order for a regional level policy to be established, the “games” or agreements at both the international and national level needs to be consolidated towards an agreeable option. This particular consolidation is what the ASEAN level policy making on the protection of migrant workers needs to work towards. Similarly the absence of such consolidation can cause slow progress in the ASEAN level policy making for the protection of migrant workers. It is important therefore to explore this particular hypothesis further in the case of Indonesia and the Philippines in ASEAN. In this section the empirical analysis of this particular interaction will be revealed further. In the next chapter an analytical discussion of how these interactions come to play will be explored in detail.

#### **IV.2. Institutions, Identities and Discourses at the Regional Level**

As the operationalisation section in Chapter III shows, what the thesis seeks to unravel here are identities and discourses within institutions at the regional level. Institutions hold a significant place in the construction of what is appropriate to do and what is not, in a manner of speaking, institutions influence members’ preferences and interests. The operationalisation section in Chapter III informs this section that to see what type of ideas institutions instil on their members with the thesis needs to look at the existence of several forms of identities and

discourses. Particular forms of identities and discourses within regional level institutions result in the formation of ideas which either support or do not support migrant workers protection policy and consequently promote similar actions. In this section the institutions that are focused on are those on the regional level; the governmental institution and societal institution.

The governmental institutions discussed here are ASEAN and the Malaysian government. ASEAN is clearly important as the regulative institution while the Malaysian government is significant for its role as a major workers receiving country in the region. The societal institution focused on here is the regional office of the International Labour Organization (ILO). The ILO is chosen here as it presents and consults standards on the issue of migrant workers protection to the regional governments. The ILO works with the government to persuade further adoption of international labour standards including standards of rights protection (International Labour Organisation 2010). With its tripartite mechanism and vast international network the regional level ILO has been a prominent actor to push government adoption of a better protection scheme for migrant workers. As will be seen in the next sections, the ILO's persuasion towards ASEAN members have previously been proven useful in pushing the regional association to include more clauses that touch upon workers protection.

#### **IV.2.1. Governmental Institutions within ASEAN Policy Making, its Identity and Discourses**

Despite not achieving a supranational degree of integration ASEAN has played an integral part in its members' regional and international politics. Some efforts to create a regional organisation before ASEAN did not succeed as initiatives toward their creation were

largely external rather than internal within the countries. An example of these efforts to organise is the creation of SEATO (Southeast Asian Treaty Organization) whose creation in 1954 was supported by American efforts to further expand anticommunism in the region (Narine 2002). After SEATO in 1961, ASEA (Association of Southeast Asia) was created with Malaya, the Philippines and Thailand as its members. Following this the Philippines, Indonesia and Malaysia (Malaya at the time) created Maphilindo (Malaya-Philippines Indonesia) established in 1963 (Narine 2002, 10). Territorial disputes rendered ASEA irrelevant to Southeast Asian countries<sup>20</sup>, although its vision towards a European Economic Community-styled organisation, with looser structures or binding obligations for its members inspired the basis for the modern “ASEAN Way” (Narine 2002, 11). Similar territorial disputes also drove Maphilindo’s existence to cease, worsened with Indonesia’s *Konfrontasi* policy with Malaysia (Kivimaki 2001; Leifer 1966; Easter 2004; Hindley 1964).<sup>21</sup> Disputes between neighbouring countries and divisions within countries’ regionalist vision made the creation of a regional organisation in the area difficult, although a vehicle for regionalism was needed. The Bangkok Declaration for the creation of ASEAN provided for both sides of these demands. Within the preamble of this declaration the intention was clear:

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20 The Philippines issued a claim for Sabah, which is a part of the federation of Malaysia in 1963. This resulted in hostilities and diplomatic disputes which led to the signing of the Manila Accord in 1963 and later in 1966. The basis of the claim has its roots from Sabah’s historical background as a part of the Sultanate of Sulu, whose people are now a part of the Philippines. Although Malaysia claims that the Sultan of Brunei ruled this part and returned it to Malaysia, the Philippines claim that after the Sultan of Sulu helped Bruneians suppress an uprising the area was later returned to Sulu. When the Europeans came and an agreement was laid between the US and the British government on territorial divisions, Sabah were not included in the boundaries of Spanish, American and Philippines jurisdiction. In 1946 rights over Sabah was turned to the British government and later to Malaysia. No major conflicts occurred between 1946 and 1962. It was only after the federation of Malaysia was in progress that the Philippines notified the United Kingdom of its claim on Sabah (Samad and Bakar 1992, 557-558; Rasul 1988, 90). The United Kingdom denied it as it was concerned to create a state as a part of a Malaysian Federation in order to contain communist threats (Leifer 1974, 62).

21 Some disputes between the Philippines and Malaysia stemmed from the Sabah conflict. The Philippines accused Malaysia of giving assistance to Muslim secessionists in the Southern Philippines while Malaysia accused the Philippines of infiltrating Sabah with saboteurs (Khong 1997, 322-323). The main conflict in this region is the period of confrontation of *Konfrontasi* between Indonesia and Malaysia. This period occurred between 1963-1966 when Indonesia and Malaysia engaged in diplomatic disputes and direct military intervention following Indonesia’s claim to stop Malaysia from becoming a part of the “new colonial powers”. After denying the Malaysian plan to establish a Federation of Malaysia in 1961-1963, then Indonesian president Sukarno accused Malaysia of preserving British and Western presence in the region (Easter 2004, 5-6). He sees Malaysian ties to “Western powers” or as Sukarno termed “Old Established Forces” as a danger to the *status quo* of the region and most of all a threat to Indonesia (Hindley 1964, 906-907; Kivimaki 2001, 9).

“MINDFUL of the existence of mutual interests and common problems among countries of South-East Asia and convinced of the need to strengthen further the existing bonds of regional solidarity and cooperation;

CONSCIOUS that in an increasingly interdependent world, the cherished ideals of peace, freedom, social justice and economic well-being are best attained by fostering good understanding, good neighbourliness and meaningful cooperation among the countries of the region already bound together by ties of history and culture;

CONSIDERING that the countries of Southeast Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples;” (ASEAN Secretariat 1967, : Preamble)

The preamble depicts the nature of cooperation within the regional grouping of ASEAN. It also shows how the members recognised that ASEAN was built from the bases of common understanding of members’ differences and issues with each other, and how the interaction within the association is intentionally diffused from focusing on these issues. ASEAN concerns more with the construction of good neighbourliness and with concentrating on historical and cultural similarities between the members and building cooperation more on non-sensitive matters of economic and social nature. Although decisions are made via consensus and dispute settlements handled through consultations, ASEAN has provided the members with a venue in which some form of cooperation between them are made possible. ASEAN’s existence as a consensual norm generator and norm socialisation venue allows for a degree of flexibility for members institutionalisation, which, for a region of this particular characteristic can be vital.

## **Identities within ASEAN**

The institution of ASEAN depicts a different type of regionalism that provides more flexibility for its members, particularly at the beginning of its creation. ASEAN identities have come across many points of alteration and modification throughout the years since it was created. To see how far and what identities have been adopted, this section looks through ASEAN declarations and its charter to identify how ASEAN perceive its role and define the norms they socialise to members. From this, the section will identify to what extent ASEAN identifies itself with regards to migrant workers protection in the region. As discourses in ASEAN have only achieved their more binding status after the ASEAN Vision 2020 of the year 1997 the discussion on discourses will commence from this year to 2009.

Established in 1967, the Association of South East Asian Nations was created in the midst of the Cold War and the fight for “spheres of influence”. Security relations between governments of Southeast Asia were divided into two major groups; a group consisting of Vietnam, Laos and Kampuchea that were Russian oriented, and a Western-oriented group which included Malaysia, Singapore, Indonesia the Philippines and Thailand (Buzan 1988, 5-8). It was in the middle of this ideological fight that Southeast Asian region was caught, further worsened by pressures of post-war development that drove the region’s nations to rivalry. Ethnic conflicts<sup>22</sup> and territorial disputes<sup>23</sup> were shadowed by Cold War sentiments to

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22 An example of this is ethnic tensions between the Malays and the Chinese in Malaysia after Singapore was included in the federation of Malaya which lead to Singapore being expelled from the federation in 1965 (Khong 1997, 323). In Thailand Southern provinces, Patani people, based on their Malay roots, demanded to be independent from Thailand to be united to the Malay countries in the peninsula (Christie 1996, 180; Harish 2006, 51-54). An assimilation project by the Thai government to replace the Malay culture and language with Thai culture lead the Patani Muslims to respond with violent resistance towards Bangkok government (Vatikiotis 2006, 32-33). In the Philippines the government remain to struggle to negotiate peace with the Moro nationalist group of Mindanao. The group represent a long history of Muslim under-representation and continued displacement of their land, particularly during government supported migration from landless poor areas of Luzon and Visayas from 1913 onwards. (Tigno 2006, 26-27). Decades of denied access to government and authority worsened by the “Jabedah” killings of Moro army recruits resulted in the creation of Moro National Liberation Front which conducted series of terrorist attacks and assassinations (Nubla 2011, 396-398; Vatikiotis 2006, 30-32).



drive more nations apart. Significantly gathering leaders of these conflicting nations together under ASEAN represents more of a political act. Its promise of consensus and consultative dispute settlement coupled with non-interference and a promise of regional stability attracted the nations caught in the pressures of the Cold War. The understanding of a shared regional identity was not the driving force of the establishment of ASEAN at the beginning. This was stressed by Ali Alatas, former Foreign Minister of Indonesia and a key diplomatic figure in ASEAN: "The truth is that politics attended ASEAN at its birth. It was the convergence in political outlook among the five original members, their shared convictions on national priority objectives and on how best to secure these objectives in the evolving strategic environment of East Asia which impelled them to form ASEAN" (ASEAN Secretariat 2009, : Overview on Politics and Security). The creation of ASEAN was clearly more influenced by a generally political interest to create an alternative organisation for conflicting countries of Southeast Asia to safeguard each other from increasing external interferences of competing ideologies and overcome internal issues.

As noted previously interests or preferences relate to an actor's particular conception of "self" or identity (March and Olsen 1998). Identity for the cooperation of ASEAN varied throughout time and it can be seen from how ASEAN defines its role. Within the Bangkok Declaration, ASEAN's role has been defined in a rather vague yet all-encompassing manner. The definition of these roles ranged from "to accelerate the economic growth, social progress and cultural development in the region," "promote regional peace and stability," "collaborate more effectively for the greater utilization of their agriculture and industries, expansion of their trade," to "to promote Southeast Asian studies" (ASEAN Secretariat 1967, : Content,

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23 In addition to those previously mentioned there is also the South China Sea disputes which involved full claim by China, Vietnam and Taiwan while partly claimed by the Philippines, Malaysia and Brunei of the Spratly islands (Simon 2008, 276). Nevertheless Indonesia and Malaysia were equally involved in a territorial dispute over two islands, Sipadan and Ligitan off the Northeast coast of the Island of Borneo (Colson 2003, 399-400; Arsana and Schofield 2005).

Second article). Although diplomatic symbolism clearly applies, ASEAN's positioning during this time was clearly focused on building a cooperation on matters where ASEAN members have more similarities and interests; economic, social and cultural issues.

The period of the 1970s brought more incentives for ASEAN to consider economic cooperation within its agenda. Instability within the international political economic system, crisis, recession and oil boom drove a shift from political security concerns to economic cooperation. This concern was evident in the first ASEAN summit, the Bali Summit February 1976 (Kng 1990, 270). Within the ASEAN Concord, known as the Bali Concord I, a further definition of ASEAN's role was put in place. The Treaty of Amity and Cooperation (TAC) was also signed in this summit. A tight political security concern was still placed as the main priority of the association's activity. This can be seen in how political-security cooperation was put forward in the drafts of ASEAN Concord commenced with:

"ASEAN cooperation shall take into account, among others, the following objectives and principles in the pursuit of political stability:

1. The stability of each member state and of the ASEAN region is an essential contribution to international peace and security. Each member state resolves to eliminate threats posed by subversion to its stability, thus strengthening national and ASEAN resilience.
2. Member states, individually and collectively, shall take active steps for the early establishment of the Zone of Peace, Freedom and Neutrality (ZOPFAN)."(ASEAN Secretariat 1976, : article A)

Similar role identification was also present within the Treaty of Amity and Cooperation (TAC) as can be seen within its preamble.

"The High Contracting Parties:... ANXIOUS to promote regional peace and stability through abiding respect for justice and the rule of law and enhancing regional resilience in their relations; ....DESIRING to enhance peace, friendship and mutual cooperation on matters affecting Southeast Asia consistent with the spirit and principles of the Charter of the United Nations, the Ten Principles adopted by the Asian-African Conference in Bandung on 25 April 1955, the Declaration of the Association of Southeast Asian Nations signed in Bangkok on 8 August 1967, and the Declaration signed in Kuala Lumpur on 27 November 1971" (ASEAN Secretariat 1976, : preamble).

The main role of ASEAN defined within these agreements was identified as an institution for regional security and stability. Matters of social nature and their cooperation were not discussed further although some needs to enhance cooperation towards it were recognised. Social concerns were not expressed within these few agreements as they were mentioned to include matters of disaster management and environmental development. Matters concerning workers issues were never present at the beginning of the association's creation, which means that initially ASEAN was not created with an identity that supports this particular issue.

The definition of ASEAN's role and identity experienced a shift when the association's ASEAN Concord suggested that "in pursuit of political stability....member states shall take cooperative action in their national and regional development programmes" (ASEAN Secretariat 1976, (1)). Economic development has been perceived as a prerequisite towards regional stability, and in conjunction with ASEAN's role definition to achieve regional political stability ASEAN should also promote economic cooperation. The evidence of this was immediately seen within the establishment of more institutional bodies to support economic cooperation a year after the Bali Concord in Kuala Lumpur 1977. These bodies included the Meetings of ASEAN Economic Ministers (AEM) and five Economic Committees on Trade and Tourism (Kng 1990, 270). This yet again indicates how early ASEAN identities did not allow sufficient space for supportive ideas of migrant workers protection to grow as the association was more concerned in surviving underdevelopment and the battle for regional stability.

During the 1980s ASEAN was caught in the middle of Cold War politics in particular when ZOPFAN was disturbed by the Vietnamese invasion of Kampuchea,<sup>24</sup> two of their most

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<sup>24</sup> Starting in late December 1978 Communist Vietnam launched an invasion of Communist Cambodia (Kampuchea). Vietnam's territorial ambition to rule the whole of Indochina coupled with Hanoi's shifting

recent potential members (Dosch 2006). This trend and the rise of inflation, debt and protectionism in the world after the crisis in 1980s make up the social environment of ASEAN. It is therefore expected that the association's identities then further directed towards initiatives for better regional security and economic cooperation. The establishment of TAC and ZOPFAN as well as diplomatic engagements during the Cambodia conflict as well as on China's claim of Spratly islands depicted some of ASEAN's main security concerns (Leifer 1999, 30-31). ASEAN identity in the 1990s post Cold War period further portrayed an economic cooperation organisation. The growing importance of the ASEAN Economic Ministers Meeting (AEM), the debt crisis experienced by its members caused by the Asian currency crisis, and the need to further cooperate peacefully lead ASEAN to reconfirm this particular identity. In 1992 the agreement to establish AFTA (ASEAN Free Trade Area) was signed (ASEAN Secretariat 1993), giving a more economical dimension into the direction of ASEAN cooperation. The next section elaborates further about the roles of these institutions in the formation of ASEAN identities.

### **Mechanism and Institution within ASEAN that Determines Identity**

#### ***The early days of ASEAN identity***

In order to elaborate on whether appropriate identities occur in ASEAN to support protection for migrant workers the thesis also examines the existence of appropriate institutions in ASEAN and whether their role is efficiently applied. These institutions include labour and human rights mechanisms, migrant workers protection and their recognition with a social rights approach.

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allegiance from China to the Soviet Union, which provided a convenient shelter from China as well as diplomatic and military support towards invasion of Indochina (Morris 1999, 6-7).

ASEAN's structure of decision making consists of a loose and flexible series of summits and ministerial meetings in which member countries can put forward policy proposals. The highest decision making body in ASEAN is the ASEAN Summit, which is the meeting between ASEAN Heads of State, formally conducted every three years. Policy proposals can also be initiated and reviewed within the meetings of ASEAN Foreign Ministers or ASEAN Ministerial Meetings (AMM) which meet yearly and report to the ASEAN Heads of State. The ASEAN Economic Ministers Meetings (AEM) represents the most important sectoral ministerial forum in ASEAN which meets yearly and is responsible for the task of overseeing ASEAN economic integration. Most of the AEM Ministers therefore sit at the AFTA Council. AMM is supported by the ASEAN Standing Committee and Senior Officials Meetings (SOM). The ASEAN Standing Committee meets in between AMMs and is led by the Foreign Minister of the country-in-chair and Director Generals of ASEAN National Secretariats (ASEAN Secretariat 2009). An ASEAN Level Inter-Parliamentary Meeting is also present. Inspired by the European Parliament, this body currently takes the form of Inter-Parliamentary Assembly to further integration and achieve an ASEAN Parliament in the future.

ASEAN is also equipped with sectoral ministerial meetings which include meetings of countries' ministers from areas such as agriculture, development planning, health, education, energy, finance, environment, information, labour, law, science and technology, social welfare, communication and transportation, tourism and youth. AEM has clearly acquired a prioritised position as it has been given as much privilege as the AMM by being given the assistance of ASEAN Senior Economic Officials Meetings (SEOM) and other economic working groups (ASEAN Secretariat 2009). This particular priority of the AEM depicts how institutionalised norms within ASEAN are concentrated within the economic advancement interests of its members. With this concentration in addition to economic-centric role

identification, the development of social ideas towards the protection of workers is bound to be difficult.

Throughout the historical building of ASEAN, its institutional identity rests on building regional stability and economic cooperation. Identities that supported labour issues have not been prominently present in the development of an ASEAN identity. During the 1970s and 1980s the necessity to stabilise economic development, increase investment flow and manage debt pressured ASEAN to further identify its role as an economic cooperation. These developments create a social environment which propagates ASEAN to put aside concerns on societal issues, including workers migration and its protection. The recognition of migrating workers in ASEAN first appeared within the Manila Declaration 1987 under the recognition to cooperate further for “trade in services” and “manpower training” (ASEAN 1987). Although there has been recognition of the need to protect their rights, labour issues remain strictly defined in relation to economic development. This is apparent in the mechanism of ASEAN Labour Ministers Meetings (ALMM), which, despite existing since 1975 did not touch upon migrant workers social rights until 1998. What remains to be the focus of this mechanism are “manpower problems and training” (ASEAN 1975), “trade unionism” (ASEAN 1980), and “exchange of experience and practices between labour ministers” (ASEAN 1982).

ASEAN’s Labour Ministers made clear of their position and role with regards to labour standards and their rights within their meetings from 1980 to 1996. ASEAN’s focus on expanding trade liberalisation develops a suspicious view of labour standards and labour issues. This is clear from the ALMM during the 1990s, especially 1994 and 1996 where it was stated that;

“The Foreign Ministers expressed serious concern that the linkage of worker rights, labour standards and environmental issues to trade could become a new pretext for

protectionism and could undermine the progress achieved so far in the liberalization of world trade....., they maintained that these issues are more appropriately addressed by other competent international bodies such as the International Labour Organization (ILO)“ (ASEAN 1994).

In 1996 the same Labour Ministers Meetings consented to:

“to reaffirm their position.....that there should be no linkage between international labour standards and international trade;.... to reiterate the view that the issue of international labour standards should be discussed in the International Labour Organisation which is the most competent body to deal with the issue, and not in international trade or other non-labour related fora” (ASEAN 1996).

It was evident in these statements that, until the 1990s, ASEAN had not developed an appropriate identity to support workers rights. Its role identification within the area of economic integration pushed the association’s perception towards workers rights as a threat to the development of their economic integration. In this case any effort of socialisation from external organisations such as the ILO was perceived as halting ASEAN’s goal achievement.

Some changes in this role identification were seen in the midst of the 1997 economic crisis in Asia. This is seen in the increasing admission and review of the ILO’s suggested reforms into the ASEAN mechanism within the ASEAN Labour Ministers Meetings 1996 and 1998 (ASEAN 1996). This trend surfaced following increasing pressure to adhere to international labour standards proposed by the ILO, especially with regards to preconditions for debt renegotiation and market access agreement that ASEAN members needed after the crisis. This period brought greater integrative sentiments in ASEAN. ASEAN Vision 2020 was created in 1997 where an ASEAN Community was envisioned by its members. The Vision 2020 also brought another consequence. More integration means more consideration for all the members concerns, even those outside of economic concerns and includes transnational social protection. The ASEAN Vision 2020’s integrative view shifted the identity of ASEAN as an institution from an economic and market based venue to an all

round integrated community. This is specifically depicted in the ASEAN Vision 2020 under “A Community of Caring Societies” whereby it was stated that ASEAN members;

“...envision a socially cohesive and caring ASEAN where hunger, malnutrition, deprivation and poverty are no longer basic problems,...and where the civil society is empowered and gives special attention to the disadvantaged, disabled and marginalized and where social justice and the rule of law reign” (The Philippines Office of the Press Secretary 2005).

### ***The shift of identity formation***

The shift of ASEAN identity towards greater recognition on the need to respond to migrant workers issues and their protection became more apparent after the establishment of several major mechanisms. In the Hanoi Plan created in 1998, ASEAN set their six year development plan to cover the period of 1999-2004. Although this Plan of Action commenced with detailed goals towards economic integration, there was more recognition towards social development, including the suggestion to utilise the ASEAN Foundation to support social development programmes and promote human rights (ASEAN Secretariat 1998). Despite this recognition, ideas over the distinctiveness of immigration and migrant workers within ASEAN’s mechanisms remain to lack depth and pace to develop further into a concrete and coherent regulation. This can be seen in ASEAN’s following few initiatives which further defines the association’s role identification. Within the Bangkok Declaration on Irregular Migration in 1999, ASEAN members along with Australia, Bangladesh, Japan, New Zealand and Hong Kong recognised the need to comprehensively address irregular migration from both countries of destination and origin. Despite this fact, the concern on migration was limited to “increasing activities of transnational organized criminal groups and those that profit from smuggling and trafficking in human beings” (ASEAN 2004, : preamble), refugee and displaced persons (ASEAN 2004). ASEAN agreements were more concerned with



migrants who were “trafficked” and forced to take refuge, putting aside migrant workers as a whole. Although the agreement itself lacks an important degree of follow up, ASEAN’s position shows a lack of priority with regards to migrant workers.

The next development within ASEAN’s role identification is the Bali Concord II where the vision of the Hanoi Plan was put into a more coherent framework under the framing of the ASEAN Community into three pillars: political and security community, economic community and socio-cultural community. This move further depicts ASEAN members’ willingness to integrate aspects of their foreign policy in the association. Despite this, the issue of migrant workers remains to be addressed limitedly through clauses on “trafficking” in the ASEAN Security Community and “human resources development” in the ASEAN Economic Community. This in itself portrays the issue in ASEAN. Identification of migrant workers as an issue of security and economic concerns by ASEAN means that mechanisms to respond the issue may not be equipped with appropriate ideas to tackle the matter.

Within the next Declaration, the ASEAN Declaration against Trafficking in Persons Particularly Women and Children in 2004, important steps were made. With this declaration ASEAN members agreed to:

“.. establish a regional focal network to prevent and combat trafficking in persons, particularly women and children, in the ASEAN region” (ASEAN 2004, : Article 1).

Although the object of this declaration remains to be persons trafficked, a regional network to regulate movement of people depicts a promising development for ASEAN. This suggests that ASEAN as an institution can identify its role socially with regards to these movements. The first recognition of such a role relating to the protection of migrant workers for ASEAN was found in Vientiane Action Programme (VAP), established in 2004 to further detail goals to be achieved to support the creation of the ASEAN Community. This Action

Programme was a result of ongoing policy negotiation between members of ASEAN and external consultative groups such as the ILO. The VAP is significant as its political development program mentioned a need to elaborate on an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers is needed (ASEAN 2004). Although this development came to light under ASC, it shows an increasing shift of identity of ASEAN towards migrant workers protection.

Further definitions of this role were elaborated at the signing of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007 in Cebu. Better protection mechanism was encouraged within ASEAN and specifically recognition on the role and responsibilities of sending and receiving states. Here ASEAN's role perception increasingly adapted a more regulatory identity on its members' actions. This is shown by the suggestion ASEAN brought to both receiving and sending to modify their policies and actions to accommodate the regulation, including "promote fair and appropriate employment protection, payment of wages and adequate access to decent working and living condition [and] provide migrant workers...with adequate access to the legal and judiciary system [for receiving states and] set up policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation for deployment overseas and protection of migrant workers when abroad..." for sending states (ASEAN 2007, : Article 8,9 and 13).

There are two main developments that occurred after the signing of the 2007 Cebu declaration. The first is the creation of the Task Force on ASEAN Migrant Workers in February 2007 to ensure the implementation of the declaration. Members of the task force include trade unions and NGOs on human rights, migrant rights and migrant organisations. The second development was the establishment of an ASEAN Committee on the Implementation in August 2007 aiming at strategising the development towards a protection

mechanism. This committee consists of representatives of member governments. From this latter development ASEAN's identity formation further showed an increasing move towards a wider realisation of responsibility to protect migrant workers in Southeast Asia. This period indicated a shift of interest towards greater identification and engagement with societal institutions and ensuring that the Declaration was implemented properly. This commitment was further redefined when ASEAN officially set 2009 as the year where its draft of the key principles from sending and receiving countries would be presented for the Declaration.

Role perception can also be seen from the availability of mechanisms or bodies that function as norms socialisation agents within an institution. For the idea of migrant workers protection to be adapted coherently these bodies would have to be concerned on a right-based approach to an extent. Within the ASEAN Charter, formulated on 20th November 2007, the association has included the need to create an ASEAN Level Human Rights Body (ASEAN 2007). A Working Group for ASEAN Human Rights Mechanism was quickly put in place and by 2009 an ASEAN Intergovernmental Commission on Human Rights (AICHR) was adopted. This relatively fast development of the Human Rights Body depicts supportive identities on the protection of human rights and the spread of such norms within the institution. At the same time it further complicates the situation with ASEAN Protection mechanism on Migrant Workers. Although AICHR was constructed within a matter of less than two years after the idea was cemented within the ASEAN Charter, it has not given enough to the establishment of an ASEAN migrant workers protection mechanism.

## **Discourses within ASEAN**

Discourses retain a significant place in the socialisation process of institutionalised norms. Institutional ideas are instilled through rules and regulations which impose particular discourses (Scott 2001, 54,57-58). Through these discourses a particular social environment is suggested and constrains actors' behaviour (Jepperson 1991, 149). From its definition, discourses here will be identified in the manner in which institutions suggest particular directives to their members' actions or in other words socialise the institutional normative ideas. Few main trends emerged in my observations of discourses in the level of ASEAN. Before the ASEAN Vision 2020, discourses released within ASEAN's official papers remain to be unbinding. This consequently means that behaviour suggestions depicted within these regulations were not equipped with sufficient imposition to influence member behaviour. In addition to this trend, ASEAN's activities in the period before ASEAN Vision 2020 were dominated with the association's focus on surviving the pressures of the Cold War and economic crisis. This in turn made important development of discourses on migrant workers rights practically nonexistent. The latest trend shows that after the signing of ASEAN Vision 2020, discourses in the association become more relevant as ASEAN mechanisms attain a more binding position in the face of its members.

ASEAN discourses develop and modify as much as its identities. Discourses in the early days of the institution portray how dominant ideas remain to surround regional and political stability and economic cooperation. The form of discourses that occurred during these times depict a more "cautious regional diplomacy" (Narine 2002, 31).

From the beginning the "ASEAN Way" provides a discourse on how members of the institution should approach issues with other members diplomatically. Diplomatic practices under the "ASEAN Way" reflected ASEAN cooperation's particularity in dealing with

competing preferences of its members. The “ASEAN Way” lends a lot of its roots from the Indonesian and Malayan custom of *musyawarah* and *mufakat* (Jorgensen-Dahl 1982, 166). *Musyawarah* refers to a specific decision making process where a decision is made after lengthy discussions and exchanges of ideas where the views and opinions of all the parties involved are considered equally in the decision. *Mufakat* refers to consensus and unanimity which represents the aim of the process of *musyawarah* in the first place (Jorgensen-Dahl 1982, 168). Within a grouping where differing interests and issues are inherent these *musyawarah* and *mufakat* are difficult to achieve, making the process function as more of a management and “containment” of problems for the sake of stability (Narine 2002, 31). This method, along with issue postponements and compartmentalising is driven by the intention to push aside sensitive issues that may disturb working cooperation in other less sensitive matters (Narine 2002, 31-33). As a result, progress in policy integration within the framework of ASEAN can happen sporadically without a definite structural mechanism.

Discourses which include suggestions on members and signatories’ behaviour can be found firstly in ASEAN’s TAC (Treaty of Amity and Cooperation in Southeast Asia). In the TAC a set of suggested behaviour were put in place. From its articles it can be seen that the suggested behaviours focused mostly on building economic cooperation and maintaining regional stability. This can be seen from articles 3 to 7:

“Article 3

In pursuance of the purpose of this Treaty the High Contracting Parties shall endeavour to develop and strengthen the traditional, cultural and historical ties of friendship, good neighbourliness and cooperation which bind them together.....

Article 4

The High Contracting Parties shall promote active cooperation in the economic, social, technical, scientific and administrative fields as well as in matters of common ideals and aspirations of international peace and stability in the region and all other matters of common interest.

Article 5

.....High Contracting Parties shall exert their maximum efforts multilaterally as well as bilaterally on the basis of equality, non-discrimination and mutual benefit.

Article 6

The High Contracting Parties shall collaborate for the acceleration of the economic growth in the region in order to strengthen the foundation for a prosperous and peaceful community of nations in Southeast Asia. To this end, they shall promote the greater utilization of their agriculture and industries, the expansion of their trade and the improvement of their economic infrastructure for the mutual benefit of their peoples....

#### Article 7

The High Contracting Parties, in order to achieve social justice and to raise the standards of living of the peoples of the region, shall intensify economic cooperation. For this purpose, they shall adopt appropriate regional strategies for economic development and mutual assistance“ (ASEAN Secretariat 1976, : Chapter III).

These discourses stress the need for members to cooperate within the areas that are less sensitive for the sake of regional stability, most especially cooperation in gaining mutual economic benefit. Particularly on the matters of regional stability article 10 and 11 gives further suggestions:

#### “Article 10

Each High Contracting Party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, sovereignty, or territorial integrity of another High Contracting Party.

#### Article 11

The High Contracting Parties shall endeavour to strengthen their respective national resilience in their political, economic, socio-cultural as well as security fields in conformity with their respective ideals and aspirations, free from external interference as well as internal subversive activities in order to preserve their respective national identities.” (ASEAN Secretariat 1976, : Chapter III).

The TAC also suggests the ways in which members should interact with each other, which informs the manner of information exchanges and therefore discourse development. Within the TAC these information exchanges were governed through “mutual respect for independence, sovereignty, equality, territorial integrity and national identity of all nations” (ASEAN Secretariat 1976, : Chapter I, Article 2), “non interference” “renunciation of the threat or the use of force” and “settlement of disputes by peaceful means” (ASEAN Secretariat 1976, : Chapter I, Article 2). These patterns of interaction consequently constitute discourses that surface in ASEAN’s decision making giving “consensus” and “dispute settlement through consultation” (ASEAN 2007, : Article 20) as the “logic of

appropriateness” (March 1994, 61) alongside “cooperation on non sensitive matters” such as economy and culture. “Good neighbourliness and meaningful cooperation” (ASEAN Secretariat 1967, : Preamble) has also represented the main discourses that ASEAN put in place as a mode of interaction that members need to adopt. These sets of discourses depict a specific mode of interaction that allows little space for correction from fellow members of the institution and imposition from the institutional mechanism of governance. In this period it was evident how ASEAN suggested modes of interaction specifically placing high priority on individual members’ sovereignty and consequently their interests and preferences.

Post ASEAN Vision 2020 of 1997, the influence of discourses became more relevant due to the increasing integration of members and the growing binding power the association possessed. Growing commitment of member states allows discourses to influence members’ policy, including that of migrant workers protection. Although previous discourses of consensus and consultation as well as non-interference are still used rigorously, more discourses surrounding migrant workers protection can be found in later agreements. The discourse on consensus, consultation and non-interference suggest ASEAN’s perception that sensitive matters concerning bilateral disputes between members are to be settled outside the ASEAN forum. Consequently, as most cases on migrant workers protection touched upon bilateral relations, this also means that matters of migrant workers can be regarded as sensitive for ASEAN, pushing the institution to refrain from its non-interference stance.

The ASEAN Vision 2020 of 1997 and the Hanoi Plan 1998 essentially consist of many sets of discourses involving suggestions towards members’ behaviour in the association. The main discourses though, as detailed in ASEAN Vision 2020, remained to be focused on regional security and more this time in economic integration:

“Vision of ASEAN as a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies” (The Philippines Office of the Press Secretary 2005) .

Similar discourses also occur in the Hanoi Plan of Action 1998 where “strengthening macroeconomic and financial cooperation” and “enhancing greater economic integration” (ASEAN Secretariat 1998, : Chapter I) were the suggested behaviour. It was the inclusion of “a community of caring societies” (ASEAN Secretariat 1997, : Chapter II) in ASEAN Vision 2020 that represented a more open association towards social issues (The Philippines Office of the Press Secretary 2005).

This “ASEAN Community” became the main discourse in the VAP 2004. The discourse carries with it greater regional responsibility towards issues that were previously left within the bilateral realm, including the protection of migrant workers. Member countries are reminded to “promote human rights and obligations” (ASEAN 2004, : Chapter II, Section 1, Article 1.1) in the VAP’s framework of the ASEAN Security Community. Although the discourse’s suggestion to put migrant workers protection and human rights issues under “security” raises doubt, progress was apparent with the inclusion of “Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers” (ASEAN 2004, : Annex 1, Ref 1.1.4.6), Post VAP ASEAN in this case has increasingly adopted a more migrant workers supportive discourse, defined as “people-centred ASEAN” (ASEAN 2007, : Preamble). This can be found further in the signing of the Declaration on the Protection and Promotion of the Rights of Migrant Workers in January 2007. With this declaration ASEAN not only projected the issue to a more societal framework, it also assumed responsibility of protection alongside receiving and sending states, as was stated in its preamble:

“CONFIRMING our shared responsibility to realise a common vision for a secure and prosperous ASEAN Community by improving the quality of life of its people and



strengthening its cultural identity towards a people-centered ASEAN through, among others, measures on the protection and promotion of the rights of migrant workers.

REITERATING that ASEAN should make further progress as a cohesive and caring society committed to enhancing the quality of life and well being of its people, especially those in the vulnerable and disadvantaged sectors” (ASEAN 2007, : Preamble).

The latter quote of the preamble sets the suggested behaviour for its members within “ASEAN as a Caring (and Sharing) Community” (ASEAN 2007, : Preamble) in the face of the overall welfare policy in the association. A series of suggested behaviours for ASEAN members was also set within this declaration which includes “promote decent, humane, productive, dignified and remunerative employment for migrant workers,” “extend assistance to migrant workers of ASEAN Member Countries who are caught in conflict or crisis....” and most importantly “develop an ASEAN instrument on the protection and promotion of the rights of migrant workers” (ASEAN 2007, : Section 4, Article 22).

The ASEAN Charter signed in November 2007 contains a series of main discourses for its members within its purposes section. Among these, the first two purposes were “to maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region [and] to enhance regional resilience by promoting greater political, security, economic and socio-cultural cooperation,” (ASEAN 2007, : Chapter I, Article 1 (1)) which revolved around regional security and economic cooperation. The charter’s behaviour suggestion that is most relevant to the protection of migrant workers was put at the 11<sup>th</sup> point “to enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice” (ASEAN 2007, : Chapter I, Article I (11)).

These discourses show that the norms and ideas supportive to migrant workers protection has increasingly been evolving in ASEAN since 1999. I observed that this trend was propagated by a different type of discourse that surfaced in this period. After the economic crisis ASEAN members were drawn into changing their economic interaction and

focused on economic recovery. The VAP recognised this discourse by “Acknowledging that the global and regional economic environment has changed and is continuously challenged by new developments which have an impact on the trade and investment flows and the economic competitiveness of ASEAN” (ASEAN 2004, : Preamble). This means that “deepening and broadening the integration of ASEAN must be accompanied by technical and development cooperation to address the development gap among member countries” (ASEAN 2004, : Preamble). This realisation to include more societal issues within the economic cooperation within ASEAN also means that as these behaviours are suggested to ASEAN members, the deepening of their economic integration will be followed by the establishment of a regional social welfare policy. The development of this discourse has then come to the recognition that without a solid welfare policy, economic integration will not be able to be pushed through. Despite this fact the reality for the regional policy framework to protect migrant workers is still far from being established. For the time being a consensus based discourse remains dominant in ASEAN, making it important for this thesis to discuss the role of other relevant member countries in the issue of migrant workers.

As the biggest workers receiving country in the region, discussion on Malaysia’s identities and discourses is included in the next section. Malaysia’s position as the largest receiving country of workers in the region makes it an important regional institution in the case. Although it is effectively a national actor, Malaysia’s pressure in the framework of two level games is one that stems from the regional level. The Malaysian government presents its pressure through international actions and policies towards other ASEAN members which provide external influence to the policy directions of both Indonesia and the Philippines. As also elaborated in the operationalisation section in Chapter III, because Malaysia provides a regional level pressure, the discussion of its identities and discourses is conducted as a part of an overall analysis of constraints from the regional level.

#### **IV.2.2. Identity and Discourses of the Malaysia Government**

##### **The Malaysian Government Identities and Migrant Workers Protection**

Throughout its history Malaysia has been particularly dependent on the flow of migrant workers towards its vast growing industries and expanding plantations, especially from Indonesia. Empirical discussion on this fact will be further included in Chapter V. In order to see how the Malaysian government identify themselves, especially with regards to the regional level protection of these migrating workers, several determinants of identity formations need to be examined. Prior literature has categorised the Malaysian government's pattern of policy from 1970s where a more liberal policy was put in place until it developed into a stricter, more rigid, work permit-based employment system applied since 1997 (Kaur 2007). In this thesis I include further examination on existing institutional indicators of identity as well as discourses of suggested behaviour to assess particular tendencies towards migrant workers protection. To unravel whether supportive identities exist for the Malaysian government the section focuses on two indicators; one, the government has working protection for both workers and human rights, and two, whether the government recognises its role as a protector of workers rights.

Malaysia's role identification was clearly seen when dealing with the opposite side of the agreement, most particularly from the Indonesian perspective. Anis Hidayah, the executive director for Migrant Care, indicated the degree of influence that the Malaysian government has in creating significant delays in the making of migrant workers protection policy in ASEAN. "It is hard to negotiate with Malaysia as they (the government) do not embrace the same principles of human rights (as other members of ASEAN)" she claimed (Hidayah 2011, : Interview). Similar accounts have also been reconfirmed by Rizky Safari, the Head of the Migrant Workers Subdirectorate at the Indonesian Ministry of Foreign

Affairs. He stated that “the problem at the moment with this process (of agreeing for a draft towards the policy to protect migrant workers) is the inability of receiving countries, most especially Malaysia to agree on certain parts within the draft proposed” (Safari 2011, : Interview). These views represent those of other parties, in particular the sending countries’ identification of Malaysia’s role in the policy making of migrant workers protection.

In looking for the existence of appropriate working mechanisms for workers and human rights protection, I found that to a degree the Malaysian government is equipped with such mechanisms. Mechanisms on the general welfare regulations towards workers and employees were released within the government’s employment policy 1955 which includes welfare measures of wage payments, workers welfare such as on “rest days and holidays,” and even on ensuring that “contracts of service not to restrict rights of employees to join and participate in or organize trade unions” (International Labour Organisation 2001, : Part II, Article 8). Similar appreciation can also be seen within the Malaysian Trade Unions Act 1959 and Industrial Relations Act 1967. Protection mechanisms and appreciation towards workers rights appears to be upheld by the government of Malaysia. A similar fact can also be found in the area of human rights. The creation of SUHAKAM (Human Rights Commission of Malaysia) in August 1999 also shows to a certain extent that the government is equipped with a degree of human rights protection (SUHAKAM 2011).

Despite the appropriate measures present, several policies and mechanisms remain to depict unsupportive identities with regards to migrant workers rights. Human Rights Watch noted that immigration and labour laws in Malaysia specifically left out the protection of the majority of migrant workers in the country who work as domestic workers. The lack of modification of the Employment Act 1955 where domestic workers were referred to as “domestic servants” (International Labour Organisation 2001, : Part XI) made available welfare protection measures which include rest days, limit of hours of work, overtime pay,

annual leave and maternity protection inaccessible for these workers (Human Rights Watch 2011). This is made worse by strict immigration law Malaysia possesses in the form of the Immigration Act 1959/1963. Under this Act forced extra judicial detention and forced removal of illegal migrant workers are justified, despite the humanitarian bases of their escape. This frequently occurs as employers often forced workers to have their passports confiscated (Amnesty International 2010, 6-7; Ministry of Finance Malaysia 2005)<sup>25</sup>, making these workers liable to be categorised as “undocumented” or according to the Immigration Act “prohibited immigrant;”

“any person who, being required by any written law for the time being in force to be in possession of valid travel documents, is not in possession of those documents or is in possession of forged or altered travel documents or travel documents which do not fully comply with any such written law” (Malaysian Parliament 2006, : Part II, Section 8, Article 3 (m)).

What is dilemmatic here is that domestic workers are often obliged to give their travel documents to their employers and register their residential status according to the employers’. When workers escape under claim of employer abuse and mistreatment, their immigration status change with the change of residence and because of their dire situation, most of the workers flee without the possession of travel documents. This automatically makes fleeing workers undocumented, despite claims of employer abuse and mistreatment. Under the Internal Security Act of 1960 “preventive detention” was encouraged before any form of trial or judicial review (Malaysian Parliament 1960, : Part II, Chapter II). For migrant workers this is especially damaging as with this Act, the Malaysian Police, which handles most of these

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25 There are still works progressing to create reliable data on the number of workers who have received such treatment as it is considered frequent practice. Interviews conducted by the Amnesty International shows that a majority of migrant workers to Malaysia have their passports confiscated by their agents or employers. In 2010 it is suspected that 2.2 million undocumented workers are present in Malaysia, largely due to unlawful confiscation of their passports. See (Amnesty International 2010). Data from the Department of Immigration of Malaysia on detained migrants showed that in 2000 there were 32,700 migrants arrested, in 2001 there were 33,021 arrested, while in 2002 there were 28,320 migrants arrested during the operation to decrease illegal migrants. From (Ministry of Finance Malaysia 2005, : Chapter 2, p.76-78)

cases, has the right to check migration status as well as detain them, often do not see workers as abused. The Malaysian Police preferred mostly to treat cases as illegal immigrants or immigration law offenders (Human Rights Watch 2011). These types of treatments are what had long been the object of criticism from international human rights and labour rights groups. Despite the Malaysian government's promise to revise the law by 2009 they have not yet done so (Amnesty International 2010).

The Malaysian government clearly does not identify themselves as a protector of migrant workers rights within their domestic politics. Since the development of plantations and agricultural industries around them in the 1970s-1980s the recruitment of migrant workers became a means to further industrialise the Malaysian economy. Migrant workers were recruited to fill jobs within the agricultural and industrial sectors, as well as domestic workers vacancies which arise from increasing industrialisation. Since this period the Malaysian economy has become more reliant on foreign workers to aid their economic progress, more than any other country in Asia (Department of Economic and Social Affairs 2009). This has been recognised by the government who then set out to put higher levy charges to obtain foreign workers in an effort to decrease employers' tendency to recruit migrant workers. Although a plan to execute this was set for early 2009, later that same year the plan was abolished. The growth of recruitment firms has also been encouraged rather than dampened by the Malaysian government since 2006 (Amnesty International 2010), which further depicts the disconnect with the government's promise to decrease workers recruitment.

## **The Malaysian Government Discourses and Migrant Workers Protection**

Discourses from the Malaysian government's perspectives with regards to migrant workers are related closely to the manner in which the government identifies migrant workers in the history of its policy making. Within its Employment Law of 1955 the Malaysian government has clearly defined "domestic workers" as "domestic servants," leaving these workers out of previously stated rights and protection mechanism that are available for other workers. Laws governing migrant workers have been exclusively governed under the Malaysian Immigration Department and Ministry of Human Resources. The Immigration Department, as a part of the Ministry of Home Affairs is responsible for enforcing the Immigration Act 1959/1963 as well as some parts of the Internal Security Act 1960. The Ministry of Human Resources is responsible for the implementation of the Malaysian Employment Law 1955. This division facilitates the discourse of migrant workers as a matter of "national security" and a necessary "threat" to the domestic job market that needs to be strictly controlled and managed by the government. The ILO has especially noted how the government of Malaysia sees that workers rights are not fundamental and promotion of such rights will hinder expansion of investment, economic growth and employment generation (International Labour Organisation 1992).

From another perspective, the Malaysian economy has throughout the years been increasingly reliant on migrant workers. Despite this fact, along the same line as the Internal Security Act and the Immigration Act, initially Malaysia had published a discourse of tight reservation towards work and employment in its territory. In 1968 the Malaysian government released the Employment (Restriction) Act. This act clearly states the limitation of employment in Malaysia and offers a regulative viewpoint on the matter;

"No person not being a citizen referred to in the Schedule shall be employed in any business in Malaysia or accept employment in any business in Malaysia unless there has been

issued in respect of such person a valid employment permit” (The Commissioner of Law Revision of Malaysia 1968, : Section 5, Article 1).

The Act also imposes a registration system which forces employers or the employee to obtain such employment permit within 30 days after employing non-citizens (The Commissioner of Law Revision of Malaysia 1968, : Section 9, Article 1 and 2). This act established a system of employment permit as an additional documentation and filtering mechanism for foreign workers in search for jobs in Malaysia. Through this permit the condition of stay for foreign workers are regulated, including their length of stay (Kanapathy 2006). This depicts the Malaysian government discourse as closer to viewing migrant workers as an economic necessity whose existence needs to be closely controlled. Despite this fact, instead of dampening the flow of foreign workers to the country, Malaysia’s constant labour shortages continued to create great demands for foreign workers, including those that are undocumented.

Since industrialisation became the centre of Malaysian economy by the country’s New Economic Policy in the early 1970s, a chance for wider employment for foreign as well as local labour was provided (Abdullah 1993, 43). This became an entry point for Indonesian workers, which, for their similar cultures and easy adaptation to the Malaysian condition, played a vital role in the Malaysian economy by late 1980s. Politically, this economic motive drove an economic discourse to the political realm of the Malaysian government. In 1991 the government projected a discourse of support towards a wider use of migrant workers as economic tools by announcing the 1991 Comprehensive Policy on the Recruitment of Foreign Labour (Liow 2003, 5). Although a suggestion of a more welcoming discourse towards migrant workers was projected from this policy, the 1991 Policy was also equipped with monitoring of the recruitment process and an annual levy to offset social costs and discourage the use of foreign labour (Yue 2008, 115). This discourse shows how Malaysian



discourses towards migrant workers are tied closely to their economic interests that clearly view these types of workers as necessary economic development for their industry and agriculture.

Despite the workers' importance in the Malaysian economy discourses released by the Malaysian government remain unsupportive of workers welfare and rights. Relating closely to the discourses in the Internal Security Act and Immigration Act, workers are continuously suffering from harsh policing of the Malaysian National Police. The Operation Nyah (Get Rid of Operation) from the police targeted illegal and undocumented workers by securing the coastlines and borders and arresting those caught with a view to deport (Kanapathy 2006). This act of policing and detention again offers a discourse on migrant workers which views them as mostly a "threat" to the Malaysian national security.

What became the issue in the ASEAN forum is that despite contradictory discourses from the Malaysian perspective, issues on these discourses are not brought up at the regional level. This again refers back to prior suspicion in the previous section on ASEAN members' shifting perception on the sensitivity of the issue of migrant workers. In the face of agreements towards the draft policy on the regional framework of migrant workers policy the Malaysian government had especially been coming into disagreements with other members with regards to the protection of "undocumented" workers. This relates to the limit of obligation to protect by receiving countries and in Malaysia's case especially, the division between those that became undocumented through accidents and abuse and those who came to the country illegally. The ideas of allowing protection clauses to refer to Malaysian law's view of "illegal" or "prohibited" immigrants forced the government to respond by implementing the Internal Security Act. This subsequently depicts the discourse of migrant workers protection as a matter of "internal security," and hence forces ASEAN to perceive the issue as a sensitive national concern for its members (Aliran 2009).

The discussion in this section denotes the trends of migrant workers rights protection in Malaysia. Some identities within Malaysia showed recognition for the need to protect the rights of migrant workers although its domestic policies showed a hostile approach towards foreign workers in general. This clarifies the tone of Malaysian identity with regards to workers protection and shows how its role perception does not include protection of the rights of migrant workers. The discourses embedded within Malaysia's regulative mechanisms for foreign workers depict a particular perception of migrant workers rights and on Malaysia's obligation with regards to safeguarding citizens of fellow ASEAN members. As these regulative mechanisms are equipped with direct security measures, once migrant workers ceased to perform their economic function, they quickly turn into a national security issue for the government of Malaysia.

These trends show that Malaysia, as an institution in the regional level, has ideas unsupportive to migrant workers rights. This in turn can lead to failure in consolidation and further present significant pressure to the formulation of regional migrant workers protection policy in ASEAN. This suggests that at the regional level of ASEAN the discourse surrounding migrant workers issue became strongly related to national security; and thus becoming a domestic politics issue ASEAN members are encouraged to not interfere.

In the next section, the thesis moves into a discussion on the ILO. Whilst discussions on ASEAN and Malaysia present the perspectives of governmental institutions at the regional level on migrant workers rights and their protection, discussion on the ILO deals with the societal institution's point of view. As a societal institution, the ILO has a vast international network that not only engages governmental actors but also works with societal actors. The organisation's active engagement in pursuing an international standard for migrant workers protection as well as this network makes the ILO a sufficiently strong pressure for ASEAN members' policy making. To what extent it will be able to push forward decision makers'

policy actions will be further explored. For the thesis in general this discussion allows an overall view of all of the relevant normative structures at the regional level that may affect normative structures at the national level, whether governmental or societal, in supporting the formulation of a regional migrant workers protection policy.

#### **IV.2.3. Identities and Discourses with the ILO**

##### **Identity of the ILO**

The ILO's identities can be seen through the institution's role perception. The ILO works as a tripartite organisation which "works closely with governments, workers and employer's organisations" (International Labour Organization 2009) to "promote a decent work for all" (International Labour Organization 2009). This clearly identifies the ILO's role concerning the regional migrant workers protection. As an international organisation, the ILO clearly identifies its role with regards to other actors involved; "ILO seeks to consult and direct their suggestions directly to the government, not to other groups dealing with migrant workers" Lotte Kejser, ILO Indonesia Office, Jakarta, Director stated (Kejser 2010 : Interview).

Since the early creation of ASEAN, the ILO has been particularly insistent on ensuring that the institution's members include workers rights and welfare consideration within its agreements and mechanisms. When the integration within ASEAN showed tendencies of heading towards a more economic route a more intense suggestion was followed through by the ILO via ASEAN's Summits and Ministerial Meetings. This role perception is as clear now as throughout history before, as the ILO reiterated in their definition of work scope; what the ILO is aiming to achieve is the promotion of "decent work" for all. At the regional

level the ILO regional office liaise with ASEAN mechanisms in order to promote a more productive employment and recently, the protection of migrant workers.

The ILO's identity has clearly been more aligned with supportive ideas of workers protection than most governmental and regional associational institutions or actors observed in this research. Since the very beginning of its institutional development which began in 1919, the ILO has been especially designated and attached with the international role to govern labour relations within the new inter-state system (built by the Treaty of Versailles 1919) (Cox 1973). At the beginning of its creation, the ILO's mandate was focused on social welfare policy which encloses a range of issues surrounding employment and working conditions. In Asia the ILO defines its role to promote decent work with the specific concentration which has been recently developed towards migrant workers protection. Although the initiatives have been consistent since the establishment of ASEAN within the ILO's programmes a specific migrant workers protection programme under the "decent work" decade 2000-2005.

### **Discourses within the ILO**

Discourses that the ILO proposed and introduced within the frameworks of ASEAN relate closely to the four pillars that the organisation set as its strategic guidelines of work. This includes "the promotion of fundamental principles and rights at work, employment, enterprise creation and human resource development, social protection and social dialogue" (International Labour Organisation 2010, : Official Website). The promotion of "decent work for all" has also become a prominent discourse embedded within the activities of the ILO. These discourses function as a method to instil "appropriate" behaviour that governments need to adopt or at the very least take into consideration in their dealings with issues of workers and workers rights.

Compared to governmental actors and the regional association of ASEAN in this research the ILO conveys more discourses and identities that support the creation of a regional protection policy for migrant workers in Southeast Asia. This showed in the ILO's suggestions to the ASEAN Ministerial Meeting. Although there is literature that stresses the influence of information and databases offered by the ILO towards their national policies, what this section refers to is particularly labour standards and laws imposed by the ILO.

One discourse that the ILO has proposed for ASEAN was the establishment of the ASEAN Forum on Migrant Labour with its first forum held in 2008. The ILO upheld the discourse that migrant workers protection is vital to be included and regulated appropriately within ASEAN, and not only workers rights. This discourse focuses on the idea that migrant workers protection needs a specific policy distinct to trade in services or general workers policy. The ILO believed that dialogue and consultations are needed to ensure the implementation of the Cebu Declaration 2007 and appreciate workers rights in order to achieve progress in the midst of economic and political integration.

The ILO's "tripartism" is another discourse that influences the works and dynamics of policy making process in the organisation. Within this tripartism, the ILO includes representations of governments, workers and employers organisations within a structure of governance which is intended to allow for policy making with "consensus" (Silva 1997; International Labour Organisation 2008). The particular structure has been criticised to inherit the tendency of government's dominations, especially Western countries that also had most of the top positions in the ILO.

#### **IV. 3. Conclusion**

The investigation at the regional level helps me to conclude on several main points. One, the examination of ASEAN shows that the institution's identities are closer to a regional security institution and economic development integration than that of social protection of workers, and two, that discourses within ASEAN also show that the institution lacks recognition for societal ideas of migrant workers rights and their need of protection.

From the concern of identity formation, ASEAN role perception has fallen short in adopting supportive ideas surrounding migrant workers protection. Unlike other policies such as economic integration and even human rights mechanisms, regional level policies on the protection of migrant workers remain unfinished. Although, in its development, ASEAN was not equipped with appropriate standardised recognition on migrant workers rights, the economic crisis which led to the signing of VAP increasingly shifted ASEAN's identities toward migrant workers protection. Arguably when these identities surfaced they were not distributed equally amongst ASEAN members that the association did not benefit from the momentum and proceeded to cement the regional policy to protect migrant workers.

Based on ASEAN's increasing acknowledgment for the need to protect workers, the fact that until now a regional protection policy on migrant workers in ASEAN has yet to be created presents a puzzle. In addition, discourses in ASEAN suggest keenness in seeing the regional policy created. During the course of this analysis I was persuaded towards the suspicion that ASEAN's age-long discourses of consensus and non-interference had become more prominent compared to other discourses on workers protection. Although ASEAN has realised its regional responsibility to protect migrant workers, issues surrounding these workers have shifted for its member countries to a more sensitive issue at the regional level, allowing members to hide under the discourses of consensus and non-interference. Dr Donald

Tambunan of the ASEAN Secretariat confirms this tendency in relation to the draft agreement towards a regional policy to protect migrant workers. He claims that although ASEAN members are very keen to come up with an agreed draft of the regional policy to protect migrant workers, “the views of other countries must also be taken into account, and that since there are still differences of views among the members of the drafting team, negotiation must continue so that a consensus can be reached eventually” (Tambunan 2011, :interview). This ultimately confirms my inference on the consensual characteristics of ASEAN decision making. This also means that as the mechanism stands, the perceptions and views of individual members will bring considerable weight into the outcome of policy making on workers protection.

From the Malaysian perspective, I observed that the state as a whole has grown to be reliant on migrant workers. It is therefore decisively difficult for the Malaysian government to identify migrant workers as entities other than those employed to further promote their businesses and industries for economic growth. Malaysia’s failure to limit the amount of migrant workers clearly depicts this particular perception of the government’s role as an employer, and not as a protector. Importantly the Malaysian government identifies migrant workers as excess unemployment abroad that provides a tool to enhance their economy and was “lucky” to be offered the “privilege” of recruitment (Ramachelvam 2008; Kaur 2010). As there is no sufficient recognition of migrant workers identity as a community in need of protection the Malaysian government has yet to adopt a protective identity towards these workers. From the country’s immigration and internal security act it is clear that a more cautious approach which identifies migrants as a threat to national security is one that Malaysia chose to adopt.

Jepperson remarks on how discourses constitute actors social environment through value permeation which then constrains actors behaviour (Jepperson 1991). Through

Malaysia's perception that migrant workers are matters of national security discourses published by the Malaysian government constitute exactly these constraints to their behaviour. As the discourses tap into ASEAN's sacred discourse of consensus and non-interference the institution is left with the tools of consensus and consultation in dealing with the Malaysian government. This means that the discourse of consensus and dispute settlement with consultation provide a loophole for member countries to remain sovereign over issues they perceive as nationally sensitive. At the same time this also signifies the unsteady norm formation present within the integration of ASEAN.

Although similar norms and ideas of regional integration are shared between members through members interactions, national-specific discourses can and may halt the process of institutionalisation within the association. When an issue is published under a sensitive discourse, such as how the Malaysian government perceive issues with migrant workers in its territory, socialisation from and to the ASEAN level embed ideas of sensitivity and suggest behaviour that preserves this sensitivity. This particular trend poses disturbances to the process of policy formulation for migrant workers protection at the ASEAN level. The manner in which the Malaysian government institutionalise migrant workers protection represents a regional level pressure for other member countries that are supporting the creation of protection policy. Within two level games this means that Malaysia's normative structure creates level one constraints for ASEAN member countries such as Indonesia and the Philippines in pushing towards a migrant workers protection policy. Their differing ideas on the need to protect workers can render consolidation difficult and agreement blocked at the international level. ASEAN's similarly unsupportive normative structure allows this to happen as long as its regional stability and economic development are assured. This provides level one agreement with significant constraints from including negotiations on matters that are deemed sensitive.



Although there exist international organisations which persistently promote the institutionalisation of migrant workers protection such as the ILO, their effort remains to be limited. The strength of the ILO's effort of institutionalisation in ASEAN still depends stoutly on individual member states' perception on migrant workers protection and their willingness to accept the ILO's standards. If members perceive migrant workers issues as nationally sensitive the ILO standard can be denounced. Although the ILO represents an important socialisation institution in the region, ASEAN's discourses provide little incentive or imposition for member states to adopt the ILO's standards. ASEAN's intergovernmental policies remain to be non-binding in nature, particularly on social issues. So long as ASEAN does not integrate itself to the ILO's international labour standards, it will be difficult to impose a regional level migrant workers protection policy.

## **CHAPTER V**

### **THE SECOND LEVEL GAME: THE INDONESIAN PERSPECTIVE ON A REGIONAL POLICY FOR THE PROTECTION OF MIGRANT WORKERS**

#### **Introduction**

The last chapter has touched upon issues of institutionalisation at the first level of the “games,” which is the international, or in this case regional, level policy making. Identities and discourses that may support or disturb the progress of migrant workers protection policy at the regional level have been examined. In order to reveal all relevant “pressures” or “constraints” that according to two level games constantly influence decision makers, the analysis needs to move further to investigate the second level games at the national stage. This means that a study of identities and discourses within the domestic national level of Indonesia and the Philippines is still required in this thesis.

After prior analyses on regional level institutionalisation this chapter represents the first part of a two-chapter section which focuses on discussions on the national level policy making. Chapter V firstly examines the trends within Indonesia while the next chapter, Chapter VI, focuses on the case in the Philippines. This chapter presents an exploration on the second level of institutionalisation which is the domestic level of Indonesia. The chapter consists of four main sections; the first provides a short background of workers migration from Indonesia, the second discusses institutionalisation of migrant workers protection at the

governmental institutions and the third presents institutionalisation dynamics on migrant workers protection in societal institutions in the country, while the fourth section concludes the chapter. By conducting this, the chapter will arrive at an overall portrayal on whether or not domestic level institutionalisation in Indonesia provide sufficient support in setting up a regional level protection policy for migrant workers.

### **V.1. History of Workers Migration in Indonesia**

Under the colonial rule of the Dutch, Indonesians were exposed to a series of patterns of migration in and out of the region. As of July 1863 the Dutch colonial government was subject to obey Anti-Slavery actions in the Americas, it was forced to rely on Javanese workers to work in its plantation businesses, trading posts and harbours in Surinam. This coincide with the economic downfall, the disastrous effects of the eruption of Mount Merapi to farm lands and the increasing population in Java that disturbed Dutch colonial's plantation as well as increased unemployment (BNP2TKI Indonesian National Board for the Placement and Protection of Indonesian Migrant Workers 2009; Nitisastro 2006, 48-49; Houben and Lindblad 1999, 30; Geertz 1963, 12-14). From 1890 workers then started migrating from major islands including Java and some parts of Sumatra to Surinam in South America. Despite unfamiliarity of Javanese workers, their reliability and transferable status increased the demands of Javanese workers. From 1890 to 1939 close to 33,000 workers from Indonesia were transported to Surinam (Van der Kroef 1951, 673; Statistisch Overzicht van Suriname 1941, 4-9). The end of the Dutch rule in 1942 and the transfer of authority to the Japanese put a stop to this migration movement. By this time the channels of migration had expanded beyond Surinam to include the Netherlands, Europe and some parts of North

America. These regions were the main destination for Indonesian workers in this colonial period.

Despite territorial and historical proximity, the Southeast Asian region was not a main destination for Indonesian workers until the start of the Second World War. During the Protectorate era Indonesian workers migration into Malaya was encouraged under Raffles' policy to develop the transit port of Singapore. Around 1870 the British protectorate government saw potential in the region's manufacturing industry. In order to support the development of this industry an increase of workers imported to Malay Protectorate States was encouraged by the British Protectorate government. The majority of workers brought to Malay protectorate during these periods are of Indonesian, Chinese and Indian origin. In 1870 the Dutch government opened Indonesian lands to Chinese and European private leases on a long term period, forcing plantation workers to move to other islands to search for work (Hugo 1993, 37; Nitisastro 2006, 48-67; Reid 1993, 64-76), or in many cases agreed on industrial plantation work in the Malay territory. Despite early historical background depicting movements of Indonesians to other countries, worker migration has not been so largely promoted and has as much influence as that during the time of the Dutch and British colonisation.

From the accounts of Kaur, it is known that there are systems which evolved to provide a framework of workers migration within the region (Kaur 2004). Until the latter part of the 19<sup>th</sup> century, the Dutch and British Colonial government acted as regulators of the flow and supply of migrant workers from Indonesia. Within these dynamics the Dutch Colonial government realised the need for a protection mechanism for Indonesian workers who are sent abroad. As more needs of Indonesian labour was expressed by the British lobby, the Dutch administration set a requirement that any form of Indonesian labour migration went through a meticulous official permit scheme (Hock 2007, 36-39; Spaan 1984, 97). In 1909

the Dutch administration released a protective scheme to complement the permit mechanism for Indonesian workers abroad named the Netherlands Indian Labourer Protection Enactment (Jackson 1961, 127). Although the British colonial government has no official recruitment policies at the time, the Dutch administration had not only established a recruitment mechanism of Indonesian workers but also developed a system of recruiters licensing, management of transport cost as well as accommodation arrangements with penal sanctions applied. This trend shows how the organisation of the Dutch colonial government was not only responsible for promoting workers migration from Indonesia; it had also recognised the support mechanisms needed for the activity, including workers protection. The end of the Dutch administration and the start of Japanese rule brought an end to prior considerations of workers protection. At the end of the Second World War patterns of workers migration followed previous patterns established in the colonial periods. During these times there was no distinct regulative mechanism particularly created to govern the movement of workers abroad. At the end of the Second World War the Indonesian government's focus was on rebuilding the nation and restructuring the country's governmental systems. Formal government regulation which specifically deals with the management of labour migration had only been established in the 1970s under Suharto's Presidency.

The Dutch administration period contributed several key features in the modern workers migration trends in Indonesia. Firstly, migrant workers move through a migration network built during the Dutch and British supply arrangement to Malaysia and Singapore and further during Dutch administration's resettlement policy.<sup>26</sup> Secondly, a system of migrant workers credit in which migration costs are firstly covered by a sponsor; i.e. banks, government or recruitment and transport agencies where workers had to pay (The Indonesian

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<sup>26</sup> The Dutch resettlement policy started out as a policy to redistribute population and work on the vast lands of the Outer Islands of Indonesia developed into becoming a part of a regional development as well as national security and integration strategy during the time of *konfrontasi* with Malaysia.

Department for Foreign Affairs DEPLU 2009; Leenarts 1999, 131-133; Spaan 1984, 93-97) back in a certain period of time.

### **V.1.1. Development of Policies in Indonesia**

Post Dutch administration, the Indonesian government was influenced by an increasing number of socialist and communist ideas, giving more concern to issues on labour management and rights. It was under the socialist Prime Minister Amir Sjariffudin in 1947 that the first Indonesian initiative to protect labour rights was released under The Law for Safety in the Workplace in Law No.33/1947 (Tambunan, Tjandra, and Suryomenggolo 2003, 1). This represents the first recognition of the need to protect labour's rights in Indonesia without the involvement of a foreign ruler. Following these laws further workers protection regulation was introduced under Law No.12 of 1948 which regulates employer's obligations to provide welfare for its workers and includes clauses against discrimination (Tjandra 2003, 1-3). This particular law has since become the basic labour act in Indonesia, giving precedence to the modern form of Indonesian employment regulations (Tambunan, Tjandra, and Suryomenggolo 2003, 2-3).

Under the rule of Indonesia's first President, Sukarno, workers migration stalled to the region. In the period of *Konfrontasi*,<sup>27</sup> an anti-Malaysian sentiment decreased the sending of Indonesian workers to Malaysia. After 1966, the second president Suharto fiercely implemented the policy of *transmigrasi*, a legacy of the colonial Dutch policy of moving

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<sup>27</sup> *Konfrontasi* an Indonesian word for confrontation represents the period when the President at that time, Soekarno, took a hard diplomatic approach against the newly established Federation of Malaya in 1963 accusing it to be a form of new colonialism. In this period a vast negative campaign was launched against anything Malaysian.

workers to the “Outer Islands”<sup>28</sup> (Islands outside the main economic islands of Java, Bali and Madura). Enforced within the Five Year Development Plans as early as 1956 this *transmigrasi* or transmigration opened Indonesians to bordering regions with Singapore and Malaysia where further transportation lines were developed to later facilitate workers migration.

Under the rule of Suharto Indonesia was focused on enhancing economic development domestically and relinquishing significant regional and international political position. In the 1980s the economic development potential of Indonesian workers drove the government to place migrant workers sending into their five-year development plan (Tirtosudarmo 2007, 240). This sentiment was cemented within the signing of the Medan Agreement in 1984 which was directed to ensure the steady supply of Indonesian workers to Malaysia (The Indonesian Department for Foreign Affairs DEPLU 2009).<sup>29</sup> This agreement had not yet included protection, and sufficient regulations for recruitment, training and transports to destination countries. As Indonesian workers are increasingly internationalised the Indonesian government’s need to make their workers more desirable drove the ratification of the ILO Convention No.144 about Tripartite Consultation (International Labour Standard) in 1990 which signifies agreement to promote international labour standards.

For the Sixth Five-year Development Plan (1993/94-1998/99) the Indonesian government also set a target number of Indonesian workers to be sent by the end of the plan’s

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28 Transmigration to the Indonesian Outer Islands commenced under the Dutch policy of resettlement implemented between 1905 to 1941 where Javanese and Sundanese were moved to Sumatra, Celebes and other islands to develop outer areas of Indonesia and take advantage of their full natural resources potential.

29 Malaysia to date is the biggest Indonesian worker receiving country in the Southeast Asian region with 2 million Indonesian workers until the year 2008. From the statistics gathered by the National Board for the Placement and Protection of Indonesian Migrant Workers (Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia, BNPTKI), 19 January 2009. The Indonesian Government so far has made ten Memorandum of Understanding with the Malaysian government and one memorandum with the Philippines government concerning supply, placements, protection and management of Indonesian migrant workers in the relevant countries. Summarised from the Indonesian Foreign Service Official List of Memorandum of Understandings.

period (Tirtosudarmo 2007, 240). This indicates an approach that resembles an export policy towards workers migration. This can be seen further by the characteristic of government bodies that deal with workers. The Directorate AKAN (Antarkerja Antarnegara or Inter-work Inter-states) established by Directive No.4/1970 (BNP2TKI Indonesian National Board for the Placement and Protection of Indonesian Migrant Workers 2009) to facilitate workers to work abroad ended up focusing on labour exports. Its replacement, the Directorate for Overseas Manpower Service (Tirtosudarmo 1999, 222), played a part in the government's ambitious 1994/1995-1998-1999 Five Year Plan target to send 1.25 million Indonesian workers (Tirtosudarmo 1999, 223). Suharto's last Minister of Manpower established a semi-government agency, PT. Bijak, to co-ordinate workers recruitment accompanied by an Indonesian Human Resources Foundation to collect fees for the insurance for the workers (Tirtosudarmo 2007, 240). Despite the fall of Suharto and his New Order ways, this business involving "commodification" of Indonesian workers remains to be the tendency within the approaches of next governments in Indonesia (Pratama 2011, : Interview).<sup>30</sup>

Although some reformist ideas and more liberal government institutions have been developed post-Suharto there remains to be a social disconnect and discord between government institutions and individuals. Under Habibie an institutional reform drove the government to ratify eight ILO Conventions on workers' basic rights, including the ILO Convention No.87, 1948 on "Freedom of Association and the Protection of the Right to Organise" (Rahayu and Sumanto 2003, 1). The entire system of the Indonesian Department of Manpower mechanism on migrant workers "export" was overhauled (BNP2TKI Indonesian National Board for the Placement and Protection of Indonesian Migrant Workers 2009), creating a nine-institution coordinating body under the Department of Manpower to oversee the recruitment, placement and protection of Indonesian workers.

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<sup>30</sup> "Commodification" was especially termed to refer to how the government and supportive structure regards migrant workers as a 'commodity' to export and make the most benefit from.



The next President Abdurrahman Wahid continued by establishing the Coordinating Body for the Placement of Indonesian Workers (BKPTKI) through Presidential Decision No.29/1999. In 2001, the Directorate General for the Development and Placement of Indonesian Workers was changed to the Directorate General for the Placement and Protection of Workers Abroad. Although his rule was short, Wahid opened politics to a vast range of societal groups (Liddle 2000, 32-33), allowing discourses on workers welfare to be exchanged widely.

The presidency of Megawati welcomed Indonesia to a Democratic Labour party rule. The institutions and individuals during her rule were more open to the idea of labour protection. In this period the Ministry of Manpower devised a body for the placement and protection of Indonesian workers, the BNP2TKI (Ford 2005; BNP2TKI Indonesian National Board for the Placement and Protection of Indonesian Migrant Workers 2009).<sup>31</sup> Despite this development, Megawati's party factions split, marking the end of her presidency (Hadiz 2002, 140). Although Indonesia has liberalised its civil society system, issues such as the ratification of UN Convention for the Protection of Migrant Workers and their Families and the acknowledgement of "domestic workers" as formal workers remains to burden President Yudhoyono's government. The government's focus on image maintenance and campaign against corruption has put concerns over matters of migrant workers aside.

In the next section of the chapter the research will move further into the analysis of relevant institutions within Indonesia's domestic politics looking at their identities and discourses. By conducting this, the analysis aims to point out dynamics within Indonesia's

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<sup>31</sup> Under Megawati's rule a new scheme to regulate the placement and protection of Indonesian workers abroad was developed. This involved a separate and distinct governing body that coordinates the effort of 10 other bodies including the Police, Department of Foreign Affairs, Department of Health, and Department of Manpower. The body will function separately from but under the umbrella of the Department of Manpower and will only focus on the wellbeing of workers during the process of recruitment, education and in placement. This body then becomes BNP2TKI that was only fully established under the rule of the next president, Yudhoyono.).

social forces that contribute to the policy behaviour with regards to policy framework on migrant workers protection at the regional level.

## **V.2. Identities and Discourses in Governmental Institutions of Indonesia**

This section focuses on Indonesian institutions both governmental institutions and the societal institutions. Governmental institutions observed here include the Department of Foreign Affairs, BNP2TKI and the Department of Manpower. Societal institutions here include the National Human Rights Commission, the Trade Union, Opposition Party members and recruitment agencies. Major migrant workers NGO here are represented by Migrant Care, and academic researchers within the Indonesian Institute for Sciences. From these few institutions the discussion further aims to examine identities and discourses within them in order to examine if they are supportive to the idea of migrant workers protection at the regional level. In addition, discussions in this section present a starting point of comparison with the case of the Philippines discussed in the following Chapter VI.

### **V.2.I Identities and Discourses in the Department of Foreign Affairs (DFA)**

#### **Identities in the Indonesian DFA**

The Department of Foreign Affairs (DFA) of Indonesia played a great deal of influence in the progress leading to a regional policy framework for the protection of migrant workers. Although the Department does not carry decision making powers on migrant workers, the DFA functions as a diplomatic representative of the government's interests abroad and represent Indonesian interests in international negotiations, including ensuring workers rights are protected abroad. Consular mechanism within the DFA also allows the transfer of

information to the national government. Without identities that support ideas on migrant workers protection, consular staff will not be able to absorb the needs of nationals abroad and inform them appropriately.

My fieldwork informs the research that the majority of actions to protect migrant workers at the regional level have largely been down to individual initiatives. Such is the case in Indonesian consulates in major receiving countries such as Malaysia, where individual initiatives by the staff of the embassy was what drove special mechanisms to protect migrant workers in need (Hidayah 2011, : Interview; Pitaloka 2011).<sup>32</sup> Despite this, recently the DFA has shown increasingly more acknowledgments of their and the government's responsibility to protect citizens abroad. This can be seen in the statements by the Minister of Foreign Affairs reminding that "the Minister of Foreign Affairs and the staff of the ministry represent the first guard in the protection of Indonesian citizens abroad" (Indonesian Minister of Foreign Affairs 2009), especially after the current Minister, Marty Natalegawa assumed the position in October 2009.

DFA's role perception appeared under the previous minister, Hassan Wirayuda (2001-2009) and Alwi Shihab (1999-2001). During the time of Foreign Minister Alwi Shihab, Indonesia was under the rule of Abdurrahman Wahid, where a rationalistic outside-in diplomacy (Sukma 2003, 113-115)<sup>33</sup> involving intense visits around the world was conducted. As a result, only few policy statements were able to be retrieved. Succeeding

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32 According to the researcher's interviews with Anis Hidayah of Migrant Care Indonesia and Rieke Dyah Pitaloka of the Partai Demokrasi Indonesia Perjuangan (Indonesian Democratic Struggle Party) the example of this include initiatives by the Vice Indonesian Ambassador to Malaysia at the time, Tatang Budi Razak (now the Director for the Protection of Indonesian Citizen and Legal Entities of the DFA). The protection mechanism that was offered at the time, specifically towards abused workers include legal pursuit for their legal documents and shelter for those who had to runaway from their employer's residence.

33 Different to other presidents of Indonesia Abdurrahman Wahid (or known as Gus Dur) fashioned a different approach to foreign policy making. When other presidents tend to finalise their foreign policy and then communicate it to the outside world, Gus Dur conducted a deductive manner in formulating his foreign policy by firstly gathering information from abroad on what foreign policy should be before using it to create policy platform.

Minister, Hasan Wirayuda, on the other hand, predicted the growing necessity of protection as one of the main activities that the DFA and its consular staff needed to focus on. This logic promotes the establishment of a specific Directorate for the Protection of Indonesian Citizen and Legal Entities in 2001 within the DFA, created with the intention to specify migrant workers protection.

Similar role perception can be seen with the current formation of the Indonesian DFA. The function of the DFA is regulated under a law that clearly supports the protection of Indonesian citizens in general, the Law No.37/1999 on Foreign Relations. Within chapter V of this law the Government of Indonesia admitted the obligation to protect its citizens abroad, provide protection when they are under threat, resolve and repatriate them (Office of the President of Indonesia 1999, : Chapter V).<sup>34</sup> Rizky Safari, the Head of the Migrant Workers Subdirector at the Department of Foreign Affairs states that “the DFA realise their responsibility in protecting Indonesian migrant workers as such other Indonesian citizens” (Safari 2011, : Interview) and added that it has been a role regulated by this particular law. Despite this fact the DFA perceives a regional migrant workers protection policy to be a more difficult task to achieve. Safari stated that for the case of an ASEAN level migrant workers protection policy, “the problem lies in consolidating ideas concerning protection from both receiving and sending countries” (Safari 2011, : Interview), which he stated to be the cause of slow progress for a protection policy at the ASEAN level. At the same time he also suggests that this was worsened by the Indonesian government’s inability to show appropriate will to protect migrant workers by coming up with working policies that allow greater protection.

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<sup>34</sup> Under the Law No.37/1999 Chapter V article 18 states: “the Indonesian Government protects the interests of all Indonesian nationals and legal entities abroad.”

Article 20 and Article 21 tackle citizens caught in conflict or crisis.

Article 20: “In case of conflicts that involve Indonesian nationals or its legal entities abroad, the Indonesian foreign office is obliged to resolve it first through deliberation and in accordance to the law.”

Article 21 “In case of threats that endanger Indonesian nationals abroad, the Indonesian foreign office is obliged to give protection and assistance, as well as a safe place to stay, and exert all efforts to repatriate them.

Repatriation expenses are to be borne by the state.”

Safari pointed out that the available legal instrument, Law 39/2004, is insufficient as it “only has nine articles dealing with protection” (Safari 2011, : Interview). If Indonesia wants the ASEAN protection policy for migrant workers to pull through, it has to formulate its domestic workers protection policy better , which will support protection of Indonesian domestic workers abroad, and reinforce anti-illegal migrant mechanisms (Safari 2011, : Interview).

Interviews with members of civil society and academic researchers also confirm that the DFA realised their role perception towards a coherent regional migrant workers protection policy. This was agreed by Anis Hidayah, the Director of Migrant Care, and Rieke Dyah Pitaloka, migrant workers rights activist working for the opposition party, PDIP (Partai Demokrasi Indonesia Perjuangan or Indonesian Democratic Struggle Party). This confirms the thesis of the DFA’s identities, although Pitaloka adds that at the moment the “effort has remained dependent on individual officials’ initiatives” (Pitaloka 2011, : Interview). She explains that the DFA needs their identities to be more welfare orientated, because “visions of handling Indonesian migrant workers hardly shifted from the more developmental approach of seeing the issue mainly from a economic development point of view” (Pitaloka 2011, : Interview). Anis Hidayah of Migrant Care equally echoed this statement by commenting that, especially under the current president Yudhoyono, false responses have been given on the issue of migrant workers protection. She argued that what is more necessary is to “formulate an efficient coherent workers protection regulation domestically within national legislation.” She added that; “Any frameworks and negotiation [by the DFA internationally] will not be sufficient without,” and “it would affect Indonesia’s bargaining position at the regional negotiation level” (Hidayah 2011, : Interview).

## **Discourses in the Indonesian DFA**

DFA's official paper institutions recognised the degree of necessity to protect migrant workers at the regional level. What will be particularly examined in this section therefore concerns on how these official statements align with the ideas to support migrant workers protection.

Suharto's main focus during his reign is on maintaining his control in the government and safeguard of his regime (Sidel 1998, 158-160). This is appropriately backed by his influence on the armed forces which play a central institutional part of Suharto's Indonesia and spread across the many levels of legislature, ministerial posts and citizen lives. Historical struggle against communism gave Suharto a reason to maintain control by repressing organisations that carry a leftist "sound"; leading to strict government control on activities by trade unions and labour organisations (Ford 2010, 524). Pancasila (Morfit 1981, 840-841)<sup>35</sup> serves as both a norm and ideology for the Indonesian nation, and Suharto's New Order is the institutional "order" by which correct application of the norms is imposed (Moertopo 1972, 14,18). The discourses under this government relates to the slogan of "ensuring political stability and economic development" which is frequently utilised by the president in his policy proposals.

The DFA currently serves a more liberal reformist idea in their conduct, and particularly with dealing and interpreting threats to the welfare of Indonesia's citizens abroad, including migrant workers. This trend is reflected within the discourses that the DFA released nationally or to other relevant institutions on migrant workers protection issue. Despite recent

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<sup>35</sup> The Five Principles on Which Indonesian Life is supposed to be based and relying on. The principles includes belief in religion, upholding of justice and civilised humanity, the commitment on the integrity of Indonesia, upholding of consultation and consensus in decision making and a commitment towards social justice in Indonesia.

changes in the internal structure of the DFA, there was a clear sense of responsibility to protect which appeared in the DFA's statements in conferences or seminars.

The discourse published by the DFA in this case revolves around "the responsibility to protect the interest of all citizens abroad," (The Ministry of Foreign Affairs of Indonesia 2009, : About us, Official Website) whereby the protection of Indonesian workers are supposed to be included. Although this discourse portrays need for protection, it does not take full account of the legal circumstances surrounding Indonesian workers working abroad. Workers' conditions may vary compared to other Indonesian nationals, especially in the face of potential occupational conflicts or abuses. In addition, most of these discourses only occurred when an actual crisis surfaced, such as the repatriation and passport providing for stranded workers in Nunukan 2002.<sup>36</sup> It still needs to include specific protection discourses on Indonesian workers abroad and refer to the complexities of their legal rights status in the receiving country. "When the DFA claims to protect the rights of migrant workers abroad, they need to be clear which rights are protected" claim Jemi Irwansyah of the PRP (Perhimpunan Rakyat Pekerja or the Union of the Working People) (Irwansyah 2011, : Interview).

During the period of Minister Hassan Wirayuda there was a conscious discourse in the DFA which portrayed Indonesian workers as "heroes." This is similar to the discourse in the Philippines and to a certain extent during the period of the New Order under "*pahlawan devisa*" (foreign exchange heroes). In comparison Wirayuda's discourse signified the start of a more sensitive approach towards workers protection, involving the establishment of the Directorate for the Protection of Indonesian Nationals and Legal Entities in 2001.

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<sup>36</sup> In September 2002 the Malaysian government issued mass forced deportation of foreign workers in the country where they ended up at the transit port of Nunukan, with no documents, finances or food.

Another discourse of the DFA relates closely to the role of Indonesia within ASEAN. When this thesis is written, the Indonesian DFA claims to remain confident in ASEAN as the main venue to achieve better protection mechanisms for its migrant workers. Irmawan Emir Wisnandar, the Deputy Director General for ASEAN Cooperation stressed that tackling migrant workers protection in ASEAN is important as “inappropriate handling of migrant workers could endanger bilateral as well as regional cooperation” (Wisnandar 2008, 4). He also added that ASEAN remains to be the “corner stone” for Indonesian foreign policy (Wisnandar 2008, 6). From this it is clear that a regional framework of migrant workers protection remains to be within the aims of the DFA. Despite this fact, there are other discourses that can dampen the progress of the DFA’s discourses. One is the discourse of diplomat exclusivity. “Embassies and Consular Services often regard issues of Indonesian workers abroad, particularly domestic workers, as lower class issues,” claims Anis Hidayah of Migrant Care (Hidayah 2011, : Interview). “If workers come (to the embassy) because of threats of potential abuse, the embassy officials would only say ‘well you are not abused yet, are you?’” states Jemi Irwansyah on workers’ claims of Indonesian consular service (Irwansyah 2011, : Interview).

This particular discourse of “diplomatic higher ground” may not be applicable generally, but it has publicised such an image to be attached to the DFA in general. This disregard on the plight of workers abroad refers to the image of exclusivity tied into diplomatic work compared to the dirty-unskilled image of domestic foreign workers, inherent to the tradition of the New Order diplomacy. Relatively small effort from embassy staff to monitor the condition of workers in a domestic surrounding added with the difficulty of domestic workers conditions whose access to transportation and free days are often limited presents dilemmatic circumstances for most Indonesian workers. During this particular period consulates, ambassadors and major positions at the DFA were specifically reserved for ex-



army chiefs, ex-head of departments or other government institutions with a special closeness to Suharto's interests. Although this system has evolved to a more democratic and career-diplomat-centred recruitment, there remains ideas within the department which suggest notions of exclusivity and class differences between diplomats and Indonesian workers abroad. Rieke Dyah Pitaloka also admits that the DFA staff lack this sensitivity of dealing with migrant workers abroad and require specific training to develop this (Pitaloka 2011, : Interview). Such sentiment may differ in the case of the Philippines, explored in Chapter VI, but similarities over the diplomatic exclusivity still remains. More sensitivity over the plight of migrant workers are seen from the Filipino DFA, although at the same time the government's overall perception on migrant workers remain to spare little space for their social rights to be fully protected.

## **V.2.2. Identities and Discourses in the Department of Manpower and Transmigration (DMT)**

### **Identities in the DMT**

The Department of Manpower and Transmigration (DMT) function as a policy formulating institution with direct mandate to the President of Indonesia. It holds the responsibility to appropriately address all concerns surrounding the sending of Indonesian workers through the media of government policies. Because of this it is important that the DMT adopt identities that support the protection of Indonesian workers at all levels of their journey abroad. Within the New Order era, the stringent economic development vision of the government pushed the DMT to identify its role closer to recruitment and training agents to ensure the supply of workers are stable for economic benefit.

During the period observed, 1999 to 2009, major changes with relations to migrant workers sending and protection mechanisms were put in place in the Department of Manpower's institutions. Previously two separate departments; Department of Manpower and Department of Transmigration, the DMT functioned as a united Department from 2001. President Habibie's construction of a 9-body institution to coordinate the regulation of migrant workers protection alters how the Department handles the issue, and consequently modifies its role perception. Previously matters of protection surrounding Indonesian workers was solely a responsibility of the Department of Manpower, under this new vision the function of protection and placement, is shared with other relevant departments. As a result there are transformations in the DMT's role identification relating to ideas of migrant Indonesian workers protection.

Role perception within the DMT within the period observed remained focused on widening employment opportunities, access to information of the job market, training and distribution of development benefits to Indonesian regions. Further concerns over social protection of workers are responded when Presidential Decree No.29/1999 on the establishment of a Coordinating Body on the Placement of Indonesian Workers was released. This Body includes government ministries from the Ministry of Manpower, Domestic Affairs, Foreign Affairs, Justice, Ministry of Information, Religion, Women's Affairs, Police Department and the Governor of the Indonesian Bank (Office of the President of Indonesia 1999). This to an extent portrays better understanding on the gravity of migrant workers protection and the need to employ all relevant institutions. Under the presidency of Abdurrahman Wahid there was increasingly more concerns put towards the protection of Indonesian workers abroad. This was generally agreed by civil society groups' representatives I came into contact with in Indonesia (Adian 2011, : Interview; Hidayah

2011; Pudjiastuti 2011).<sup>37</sup> Wider concern to ensure trade union rights were created under Law No.21/2000 on Trade (Minister of Manpower and Transmigration of Indonesia 2002), and a more hands-on approach was taken by the DMT and the President in workers protection (Republika 2011).<sup>38</sup> The DMT specifically put in place an inspection mechanism to ensure the appropriate processes are implemented in workers sending from Indonesia under the Minister Instruction No. 02/MEN/1999 which aims are;

“to rise the protection for Indonesian workers who are placed working abroad, it should be supported with an orderly administration and law enforcement” (Minister of Manpower and Transmigration of Indonesia 1999, : Preamble).

Despite acknowledgment of government’s role in protecting workers abroad, Ministerial Decree No.KEP-204/MEN/1999 and 138/MEN/2000 remains to depict the DMT’s unwillingness to structuralise protection. In Ministerial Decision 138/MEN/2000 the Department states that;

“Indonesian recruitment agencies are obligated to resolve conflict or disputes between workers and employers,...to be able to do so the agencies can coordinate with Foreign Representatives of Indonesia” (Minister of Manpower and Transmigration of Indonesia 2000, : Article 5).

This means that when the workers are abroad the responsibility of protecting them is given to private agencies and governmental support is left to the consular services and foreign representatives under the DFA. The DMT does not suggest admission of their role in protecting these workers or any responsibility towards the workers at all. Ministerial Decision no.204/MEN/1999 redefines the DMT’s position of responsibility:

“it is the recruitment agencies who are responsible to Indonesian workers placed from region of origin until they come back to that region” (Minister of Manpower and Transmigration of Indonesia 1999, : Summary Article 53 and 54).

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37 Equally, Anis Hidayah of Migrant Care, Harris Ashar of the National Commission for the ‘disappeared’ and Victims of Violence, Donny Gahril Adrian, academic for the Department of Philosophy, University of Indonesia and Trinuke Pudjisti of the Indonesian Institute of Sciences responded that Wahid’s presidency gave the best treatment towards the rights of Indonesian workers abroad.

38 For example, Wahid directly called the King of Saudi to fight for the remission of Siti Zaenab, an Indonesian worker that was facing death sentence in 1999, which lead to her release. From an interview with Hasyim Muzadi, Chairman of Nahdatul Ulama, Islamic Organization on the works of Abdurrahman Wahid.

The end of Wahid's Presidency signifies shortcomings in the formulation of regulations directed for migrant workers protection. The Training and Preparation pre Departure mechanism previously established to better prepare Indonesian workers on employer's obligations and workers rights protection was abolished. The responsibility to provide such preparation was then transferred to private recruitment agents and provincial training posts (Syamsuddin 2011, : Interview). This move not only limits the ability for government to achieve a national standard for workers but also allows more space for provincial authorities to extort workers through fee collections and regional taxations. Din Syamsuddin claims that once the government lost control over workers welfare the system will be even more difficult to be reformed (Syamsuddin 2011, : Interview).

A specific migrant workers protection policy was not established until 2004. Until then the matters of protection responsibilities towards Indonesian workers under the Presidency of Megawati were handled through Act no.13 year 2003 on Manpower. Under this act protection responsibilities were put into the hands of employment agencies and employer as stated within in the Act:

“(2) Job placement agencies as mentioned (under subsection (1)) are under an obligation to provide protection to manpower that they try to find a placement for since their recruitment takes place until their placement is realized,”

“(3) In employing people who are available for a job, the employers as mentioned (under subsection (1)) are under an obligation to provide protection which shall include protection for their welfare, safety and health, both mental and physical” (The Indonesian House of Parliament 2003, : Article 35 (2) and (3)).

As many criticise this intentional omission of protection clauses on migrant workers, doubts surrounded the willingness of the Megawati presidency to tackle the issue appropriately. Although the presidency was supported by the Indonesian Democratic Struggle Party, backed by labour groups, establishing social protection clauses for Indonesian workers

did not appear to be the highest priority of the government. This was agreed by Harris Azhar, Coordinator of Kontras, as well as Anis Hidayah of Migrant Care who both regretted the creation of law No.39/2004 on the Placement and Protection of Indonesian Workers that was deemed to be insufficient and badly formulated (Azhar 2011, : Interview).

In this particular law No. 39 /2004 what little protection clauses the government suggest remain normative. Although the responsibility to protect was apparent and clearly attributed to the government; “the government has the duty to manage, train, conduct and control the placement and protection of Indonesian workers abroad” (House of Parliament of Indonesia 2004, : Preamble) and also “to guarantee the fulfilment of the rights of Indonesian workers,[...]conduct diplomatic efforts to guarantee the fulfilment of the rights and protection of Indonesian workers optimally in destination countries, and provide protection to Indonesian workers before sending process, placement and pre-placement (Minister of Manpower and Transmigration of Indonesia 2004, : Chapter II, Article 7).” The actual “protection” chapter within the law only accounts for eight articles out of the whole 109 articles included within the law. Issues of workers placement clearly dominated the law from articles to detail regulation of permissions for private recruitment agencies, partnerships of placement (Chapter IV, 17 articles in all), Indonesian workers identity cards and suggested practice of recruitments and trainings (Chapter V, VII, VII, and IX, 60 articles in all). An increasing role to protect and train Indonesian workers was given to government representatives abroad under the creation of a “manpower attaché.” Other than this point, details were not given on how the government was to distribute the protection to workers abroad. The creation of BNP2TKI was also initiated within this law, although like most of its regulations, more emphasis and details were put on clauses of “preparation” and “placement,” not “protection.”

The creation of BNP2TKI further deepened the DMT's reliance on external institution for workers protection. The appointment of Jamsostek (*Jaminan Sosial Tenaga Kerja* or Workers' Social Insurance) in 2005 as a provider for workers insurance was referred to as the DMT's effort to come up with better protection for workers (Syamsuddin 2011, : Interview). In addition, the role definition between BNP2TKI and the DMT was constantly overlapping, further worsening coordination effort involving the two bodies. DMT's role perception in its activities is concentrated more on placement. The transfer of some protection and placement function to the BNP2TKI resulted in DMT budget transfer to BNP2TKI and further ignite disagreement of task divisions and distribution of authority (Pitaloka 2011, : Interview).<sup>39</sup>

After BNP2TKI was established, laws and regulations from the DMT focused more on issues of recruitments (Ministerial Decree no.200/MEN/IX/2008, and 156/MEN/V/2009), placement (Ministerial Decree 201/MEN/IX/2008 and 157/MEN/V/2009) and information management on migrant workers (Ministerial Regulation PER. 01/MEN/I/2009, PER.03/MEN/II/2009 and PER.08/MEN/IV/2009) (Minister of Manpower and Transmigration of Indonesia 2009, 2009, 2009). This was more apparent as from 2008 to 2009 more Memorandum of Understandings (MoU) were signed directly from Indonesia with destination countries such as Qatar and Japan to send more workers with specific qualifications or with more official training by the government (Minister of Manpower and Transmigration of Indonesia 2008).

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<sup>39</sup> According to Rieke Dyah Pitaloka these trends portrayed the new government (Yudhoyono)'s lack of institutional planning and the focus of its officials.

## Discourses in the Department of Manpower

From the DMT's historical development it was suggested that the creation of migrant workers policy mechanism within it was particularly influenced by the view of Indonesian workers or TKI as a part of an economic development strategy, producing a discourse of "commodification" (Harvey 2005; Polanyi 1944).<sup>40</sup> During the period observed there are few changes into the substance of discourses published from the DMT. Some discourse of commodification remains to be present within the DMT post New Order era, coupled with some discourses on mis-coordination which surfaced from frequent changes in the DMT structure during reformation.

Although during the first few years of the presidency, Yudhoyono's Manpower ministry showed concern for the need to protect Indonesian workers abroad, policies to support this intention have not materialised. Under Ministers Erman Suparno (2005-2009), Bommer Pasaribu (1999-2001) and Fahmi Idris (1998-1999 and 2004-2005) more concerns have been directly put into labour matters and their rights. Pasaribu, especially, originated from labour-rights focused Indonesian National Federation of Workers' Union (Federasi Serikat Pekerja Seluruh Indonesia), where his legal background was utilised in defence of workers' interests. Erman Suparno, on the other hand was especially keen on pushing forward the Colombo Process on the management of Overseas Employment which seeks to coordinate the effort of both sending and receiving countries in the placement and protection of workers (Participating States of Colombo Process 2004).

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<sup>40</sup> Similar term has been used by David Harvey to refer to the treatment as commodities elements within everyday life that are not produced as commodities (Harvey 2005, 113-114). Karl Polanyi has stated that what was viewed economically as commodities, land, labour and money are in essence not commodities. "Labor, land, and money are obviously not commodities; the postulate that anything that is bought and sold must have been produced for sale is emphatically untrue in regard to them" (Polanyi 1944, 74).

Within the first half-decade (1999-2004) the DMT's discourse was influenced by reformist ideas and liberal views to create institutional mechanisms that were more supportive to societal interests such as the protection of Indonesian workers abroad. Here the discourse of "better protection for workers" was upheld, in particular during the presidency of Abdurrahman Wahid. The creation of a Coordinating Body for the Placement and Protection of Indonesian Workers in 1999, revival of trade union activities within the law No.21 year 2000 on Trade Unions and reinstatement of Ministerial Instructions on the protection function of the DMT, for example in previously stated Instruction No.2/MEN/1999, described the extent of which suggested behaviour that are more supportive to workers protection was released by the DMT. Despite this fact, constant changes in the executive seat caused uncertainties within the DMT, forcing it to refrain from its economic development focus. The growing realisation of government's responsibility to protect was particularly evident within the GBHN (Indonesian Guidelines of State Policies) for year 1999-2004. In Chapter IV on matters of economic policy the GBHN stated that state policies need to be aimed at;

"increasing the quantity and quality of workers placement abroad by focusing on workforce competence, protection and defence that is managed accordingly and prevent exploitation of workers" (The Indonesian House of Parliament 1999, : Chapter IV Article 5,19)

Post Wahid presidency major legal bases of the DMT began to show the return of "commodification" with more emphasis put in activities of placement and recruitment. Although the recurrent discourse of migrant workers as "heroes" was also admitted, within the Act No.13 year 2003 as previously showed, the discourse that the DMT released not only distanced the DMT from the direct protection of workers, but also allows the privatisation of workers protection by employers as well as recruitment and placement agencies. The DMT also promulgate this by assuming less control of the process of workers sending, training and recruiting to provincial governments. It was clear that from looking at the development of the



DMT's role identification, the discourses within this institution leaned more towards management of workers, making the responsibility to protect only partially DMT's concern. According to Anis Hidayah of Migrant Care it has been clear that the DMT misunderstood the way in which the discourse of "safe migration" is implemented (Hidayah 2011, : Interview). "Safe migration" for the Department of Manpower is governed under the idea of decentralisation of authority distribution brought about by reformation in post New Order public policy making, which promoted less government control. This leads to privatisation of the workers sending process as migration is "safer" according to the DMT when it is done through recruitment agencies, by employers or via private insurance companies, leaving less authority to rest in the government's hand. As a result this discourse not only drove workers further into exploitation for economic gains but also carries international disadvantages for Indonesian diplomacy concerning workers issue. This discourse portrays the government's lack of understanding in capturing workers' protection needs and shows damaging unwillingness in the face of foreign negotiations towards better protection clauses for Indonesian workers abroad.

Another discourse that I have previously remarked on the case of the DFA has also been found in the activities of the DMT. Between the works of the field official and the higher ranking decision makers within the DMT there remains the need to distance their position with regards to Indonesian workers, especially domestic workers. Regulations which suggest discriminating discourses adopted by the DMT were released, which consciously made Indonesian workers increasingly prone to extortion and abuse. The regulation to divide arrival lanes and sectors where Indonesian workers return from followed by the establishment of a different terminal at the Sukarno Hatta Airport allowed more opportunities for transport organisers and customs to impose unnecessary fees on these workers (Palupi and Buntoro 2005). When other passengers are free to leave the airport once they pass immigration and

retrieve baggage, workers had to pass through a “special Indonesian workers lane” where they are then transferred to Terminal 3 which also functions as a Centre for Workers Returns Data. Throughout this transfer process is where there is a series of unnecessary fees, listing from transport fees, porter fees, to fees for workers’ families to have their name announced (Silvey 2007). This need to “segregate” and divide Indonesian workers with other passengers has grown from practicality to a discriminatory practice that treats workers as second class citizens. Although at the Sukarno Hatta Airport a large billboard advertised a great welcome for Indonesia’s migrating workers, the treatment of immigration officers and the strict separation between the workers and normal passengers’ route redefined the notion of “segregation” and existing patron-client relationship as seen before in the case of the DFA.<sup>41</sup>

Another discourse that affects migrant workers protection is the mis-coordination between institutions governing the protection of migrant workers. After the establishment of BNP2TKI, the DMT’s placement and protection function was mostly transferred to the new body, causing the abolition of the DMT’s directorate general on placement and protection. The then Minister of Manpower and Transmigration, Erman Suparno revived the directorate general shortly after, leading conflicts to deepen between the BNP2TKI and the DMT on workers health and competence certification. The amount of funds generated by certification made it a big source of income for the institution (Sijabat 2010).<sup>42</sup> Disputes between the two bodies went to the House of Parliaments (Sijabat 2010) and the Supreme Court which in the end granted the DMT authority for health and competence certification. Despite this fact, when the decision was left pending between the periods of 2007-2008, the health and competence certification function was still not regulated appropriately. This, and appalling

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41 This is particularly observed by the researcher in her work in the Soekarno Hatta Airport Terminal 2 and 3, 3-10 March 2011.

42 Workers certification is especially important as it is well known to generate funds for organising bodies. Each certification costs IDR 160,000 (US\$16) with around 3000 workers departing every month to Malaysia, Hong Kong and Middle Eastern countries.

coordination between BNP2TKI and the DMT over placement and protection function has left workers rate of abuse and fatalities to rise from 2007 (Hidayah 2011, : Interview). The DMT has shown a specific discourse that signals the commodification of workers sending process, and it has suggested intentions to maintain this particular system. Jumhur Hidayat, the Head of BNP2TKI admits the dispute and claims that it is due to misperceptions on clauses within the Law 39/2004 (Prianti 2009). He also added that it is shameful that too many labour disputes and abuses have been unsolved due to focuses on collection fees from migrant workers (Sijabat 2010), and misunderstandings of scopes of work as defined within new legalities (Subagja 2009).

### **V.2.3.Identities and Discourses in BNP2TKI**

#### **Identities in BNP2TKI**

Within its official statement of roles and vision the BNP2TKI clearly identifies its role to protect workers abroad. This particular role identification, on the other hand only comes third after “creating wider opportunities for Indonesian workers to work abroad” and “increasing the competence and quality and service of Indonesian workers placement” (BNP2TKI Indonesian National Board for the Placement and Protection of Indonesian Migrant Workers 2009, : Vision Section, Official Website). Despite this fact, an increasing presence of role identification which to a certain extent accommodates the idea of workers protection has been observed. The structure of BNP2TKI itself represents a degree of realisation of the need to not only protect workers abroad but also to coordinate the protection effort from government institutions of many different sectors.

Although at the beginning of its creation BNPTKI's role identification showed shifts in accommodating more concerns of protection of workers equally as concerns of placement, I found that regulations released and supported by the BNP2TKI maintained a placement-oriented view. Within Law No.39 year 2004 where the suggestion to create the body was first published, and within the Presidential Decree No.81 year 2006 BNP2TKI's role identification for placement and protection was not defined separately. The only precise role identification of the BNP2TKI was stated under regulations of status, tasks and functions of the body:

“BNP2TKI conducts the task to...provide services, coordinate and conducts supervision on ....(1) dispute settlements, and (9) increase the welfare of Indonesian workers and their family” (The President of the Republic of Indonesia 2006, : Article 3 ).

Other than this particular clause the BNP2TKI's identification of the role to “protect” workers is attached to the role to “place.” This can be seen in the bases of the body's creation;

“ (BNP2TKI)...to ensure and boost the achievement of placement and protection goals of Indonesian workers abroad.” (Minister of Manpower and Transmigration of Indonesia 2004, : Article 94 (1)).

“(BNP2TKI) has the function to implement policies in the area of placement and protection for Indonesian workers abroad in coordinated and integrated manner” (Minister of Manpower and Transmigration of Indonesia 2004, : Article 95 (1)).

In addition to this, the first regulation released by the Head of BNP2TKI, law No. PER 28/KA-BNP2TKI/VII/2007 was on foreign jobs exchange to facilitate sending Indonesian workers abroad. It suggests a similar misconception as shared with the DMT on how to protect Indonesian workers. In January 2008 a new law was released by the Head of BNP2TKI, Law No. PER.01/KA/SU/I/2008 on Services for Returning Indonesian Workers from Abroad in Soekarno Hatta Airport. The law is formulated with the consideration that: “there are risks of inhumane conducts experienced by Indonesian workers when they are

leaving to or returning from abroad” (the Head of BNP2TKI 2008, : Preamble (a)), “that returns services at the Airport Terminal 2 and 3 is considered to be insufficient,..it is therefore needed to achieve optimum protection and a guarantee of safety and comfort..” (the Head of BNP2TKI 2008, : Preamble (b)). Despite this fact the consideration section also claims that “it is needed to achieve optimum protection and a guarantee of safety and comfort to build a good *image* of workers returns services to provincial origins” (the Head of BNP2TKI 2008, : Preamble (b)). The effort to better services and treatment at the airports was referred to as more of a measure to maintain the good image of the placement institutions instead of one that is intended to create a better experience for the workers themselves. This suggests that the role perception that BNP2TKI adopts weighs more on maintaining a certain image than ensuring workers well being.

Role identification within the BNP2TKI as observed so far has yet to show sufficient support towards the idea of a sufficient and coherent worker protection. From this determinant factor I can assume that the BNP2TKI’s approaches remain to depict similar methods to former workers sending regimes that overtly focused on the economic benefits of migrant workers. This renders the body’s regulatory mechanism to be dominated on placements instead of protection. Although there are some signs of shifting paradigms towards the importance of giving more attention to protection mechanism, it is still early in the BNP2TKI’s existence to see the extent of their identity formation on this issue.

### **Discourses within the BNP2TKI**

Discourses within BNP2TKI are as complicated as matters of identity within this body. Although BNP2KI was straightforwardly created to tackle administration and coordination issues surrounding the placement and protection of migrant workers as I observed the body

did not fully succeed handling existent coordination issues. BNP2TKI's discourse has clearly showed support towards protection of migrant workers at every level. The motto within its public information pamphlets, official website and publications claims that "BNPTKI Menaungi TKI" or "BNP2TKI Shelters Indonesian Workers." This is also made clear by the Head of BNP2TKI, Jumhur Hidayat's statements which stressed on the difference of BNP2TKI's approach; "the BNP2TKI are not just bureaucrats, BNP2TKI are bureaucrats who protect" (Kampung TKI 2011). Regardless of the fact, BNP2TKI's legal frameworks still suggest perceptions that attached the mechanism of protection tightly to policies to regulate placement. This means that the discourses that this body published do not always coincide with the ideas supported by the body.

Within Presidential Decree No.81 year 2006 on BNP2TKI, the body is equipped with a Deputy for Protection which is fully responsible for the formulation of technical policies surrounding Indonesian workers protection. It is also equipped with four directorates which each have four sub-directorates (The President of the Republic of Indonesia 2006, : Chapter VI, Article 17-19). This law additionally governs provincial level placement and protection offices that distribute the authority of BNP2TKI to the provinces (The President of the Republic of Indonesia 2006, : Chapter VII, Article 23-25). From the view of institutional capability the BNP2TKI is therefore equipped with the tools to ensure workers protection even to reach provincial government level. If these institutional tools are able to distribute coherent protection clauses from the central BNP2TKI the issue of standardisation of protection mechanism between the provincial and central government can be resolved.

Within the first regulation released by the Head of BNP2TKI, law No. PER 28/KA-BNP2TKI/VII/2007 on Foreign Job Exchange the body depicts the job exchange as a manner of protection:

“Services through foreign job exchange can provide protection to candidate Indonesian workers ....can provide facility, efficiency and safety for the implementation of workers’ placement abroad..” (BNP2TKI Indonesian National Board for the Placement and Protection of Indonesian Migrant Workers 2007, : Preamble (1)).

This suggests that a potential misunderstanding on how protection of workers should be framed with remains to be present in the body. The discourses that BNP2TKI published suggest therefore a perception of protection that does not support ideas of workers protection. I suspect that this is inherent from the previous workers management regimes’ discourse of economic development, worsened by the current Presidency’s obsession with image politics. An example of this particular policy occurred more recently in 2011 when President Yudhoyono released the policy to equip Indonesian workers, particularly those going to South Korea at the time, with a cell phone that according to Jumhur Hidayat of BNP2TKI would “enable them to communicate more frequently with their family members and related government authorities in Indonesia” (The Jakarta Post 2011). He also added that “(hopefully) this reduces the amount of problems faced by migrant workers.” The President and BNP2TKI signed a contract with the Nurkumala Hermin CV (unclear at the time of writing whether the company is a telecommunication supplier or a recruitment agent) which is willing to supply the cell phones as a donation. This futile effort shows the degree of disconnect between the BNP2TKI’s discourse of protection and what is actually needed by workers abroad. What I observed under the influence of the current President Yudhoyono is that the main discourse has been focused on gaining and maintaining a good image for the presidency. Most protection clauses put forward by migrant and human rights groups are responded by government promises of a better mechanism despite no sight of substantial development when an actual policy was released.

Another discourse that equally affected the body’s work ethics is the large amount of mis-coordination between the DMT and BNP2TKI. As seen in the previous section both

institutions have been involved in conflicts about the division of works between them. This mis-management appears as a discourse in the Law governing the works of these bodies. Under Law No.81 year 2006 on the BNP2TKI the position of the body is ambiguous; in Chapter I article 1 BNP2TKI is “a non-departmental institution that is under and responsible to the President” (The President of the Republic of Indonesia 2006, : Chapter I, Article 1). This refers to a position that is equal to a department minister, with ministerial rights and obligations, outside the ministries themselves. Despite this, article 4 of the same chapter in the same law regulations it was said that “in implementing its functions and tasks BNP2TKI is coordinated by the responsible Minister in Manpower area” (The President of the Republic of Indonesia 2006, : Chapter I, Article 4). This suggests that the Minister of Manpower and Transmigration has authority over the BNP2TKI and serves to determine the manner in which the BNP2TKI implement their policies. The two articles within the Chapter present a conflicting perception on the scope and position of authority of the two institutions in the face of one another. If a comprehensive cooperation is to be merged between these institutions a better discourse needs to be socialised. The case of the POEA and the OWWA in the Philippines is an example of institutions where integrated ideas towards coherent migrant workers welfare became the driving force of the country’s migrant workers sending schemes. While the POEA governs the actual mechanism, the OWWA manages the fund for the mechanism. Such system and institutional structure is clearly lacking in the case of Indonesia.



### **V.3. Identities and Discourses in Societal Institutions in Indonesia**

The institutions that will be examined in this section dealt with differing sides of the issue of workers protection and views the matter through their specific differing perceptions, may it be human rights, migrant rights, from a labour union's perspective, or from an academic perspective. Another perspective that I am particularly looking into in this section involves a different type of non-state institution that deals with the business side of the case, which are recruitment agents.

For a better understanding of different concentration of societal institutions, in this discussion they are divided into two clusters. The first cluster of societal institutions includes institutions which have the form of non-governmental organisations and trade unions. These institutions' activities surround the area of workers' rights and have generally similar perceptions and ideas of how the rights for migrant workers should be perceived. The institutions under this category include the National Commission on Violence against Women (and human rights), Migrant Care, as well as the Labour union. What will also be included are the opposition voices represented by the Partai Demokrat Indonesia Perjuangan or the Indonesian Democratic Struggle Party (PDI-P) which originated from a pro-labour idea, and academic researchers from the Indonesian Institute for Sciences and the University of Indonesia. These institutions are chosen as they cover relevant focuses of the civil society with regards to the protection of migrant workers. These institutions have also been vocal in fighting for Indonesian workers protection, both direct and indirect, in the face of the government and some within ASEAN. Discussion on these institutions focuses on how they identify what needs to be included in migrant workers protection policy and what types of policies protection need to take form as well as who should be responsible for the protection.

For the second cluster of these institutions I examine the identities and discourses of the PJTKI through APJATI the main recruitment agents for Indonesian workers. Compared to the institutions of the first cluster, recruitment agents may show similar identities and perceptions on the need to protect migrant workers, but observed in detail the notion of responsibility to protect as well as their discourses can show variations. This can be due to the differing areas where they conduct their activities and their perception of what would be beneficial for their existence with regards to migrant workers protection.

### **V.3.1. Identities and Discourses within Societal Institutions in Indonesia**

#### **Identities within Societal Institutions in Indonesia**

From the fieldwork I can observe how particular trends occurred in the way that societal institutions view the protection of migrant workers, especially those in cluster one. In terms of identity what can be seen within these institutions are role identifications that relate to not only the institutions' own role on the issue of migrant workers protection, but also the role of other institutions relevant to policy making on the issue, including the state governments and ASEAN itself as a regional organisation. What I also look at here is whether ASEAN has been identified as a significant institution whereby to tackle issues of migrant workers protection through its policies. This is important to understand the degree in which ASEAN's discourse achieves responses at the societal level that reconfirms the type of identities ASEAN should have.

In terms of role identification I am able to gather that they carry similar identities, in particular those from the civil society. Although differences might appear in their perception these identifications pursue similar causes with regards to supportive ideas to migrant

workers protection. The National Commission on Violence against Women stated their role identification as entailing “To strengthen efforts to prevent and deal with all forms of violence against women and to promote survivors’ rights to the truth, justice, multidimensional rehabilitation that includes economic, social, political, and cultural rights based on self-integrity rights.” Their scope ranges from promoting “legal reforms and policies, as well as to boost synergy among related government agencies and public organizations to fulfill state’s responsibilities to eliminate violence against women” to “strengthen networks and increase solidarity among victims and human rights defender at local, national, and international levels” (The Indonesian National Commission on Violence against Women 2011, : Vision Mission and Role, Official Website). Migrant Care’s role identification revolved around the same voices through “developing a global discourse for the justice of migrant workers” and “strengthening cooperation and the development of advocacy for migrant workers in Southeast Asia” (Migrant Care 2009, : Programmes, Official Website).

The labour union PRP (Persatuan Rakyat Pekerja, or the Association of Working People) perceives that what really occurred is a class struggle between the ruling class of businesses and the workers, so a political system is needed where workers are dominant (Perhimpunan Rakyat Pekerja PRP 2012). The opposition party PDI-P equally possesses similar views. They identify their role as “a tool for people’s struggle and organization” (PDIP 2012 : Official Website), as well as the “guide for the mandate of people’s suffering according to the Constitution and the Five Principles of Nationhood” (PDIP 2012 : Official Website). The PDI-P also states their role to “fight for the interests of the people in politics, social and economics democratically” (PDIP 2012 : Official Website). These role perceptions represent ideas that are pro-people and supportive of ideas surrounding the promotion of people’s rights in general and workers rights in particular, which suggests equal

support on the idea of Indonesian workers protection. Other than these civil society organizations, academic researchers brought along similar identification with the struggle for rights promotion for the people in general.

Despite similar perspectives on the need to protect migrant workers, these societal institutions still have differing views on how best to tackle the issue of protection policies. Different strategies may seem trivial but they determine how identities are perceived between institutions which in turn can influence how they interact with each other. Within the activities of societal institutions the expansion of networks is important for the mobilisation of the institutional goals to the level of governmental and regional policy making. Therefore this degree of differing work will be essential to be included in this chapter.

Within the first cluster, both academics and major civil society organisations regard the role of ASEAN from a pessimistic perception. Two of the relevant academics that I have interviewed identified the issue in different ways. The Indonesian Institute for Sciences (LIPI) perceive that ASEAN is an important institution from which member countries can manage the protection of migrant workers. Although the institution portrays some efforts with the Declaration for the Promotion and Protection of the Rights of Migrant Workers 2007 and Vientiane Action Programme, LIPI perceive the achievement to be solely the result of the civil society's bargains not the members of ASEAN itself. "ASEAN's concept of a "people-centred" organisation that was a development from a "people-oriented" vision did not particularly surface from the association's members themselves, but more from civil society organisations" added Trinuke Pudjiastuti, a researcher within LIPI working on migrant workers protection in ASEAN (Pudjiastuti 2011, : Interview). According to this LIPI researcher the main mechanism within ASEAN remains to be state-centric, leaving most of the decision making process reliant on individual member states foreign policy and thus, interests.

On the issue of migrant workers it is particularly hard to achieve a satisfying outcome as “the Indonesian foreign policy remains elitist, not people-centred as it aimed to be” (Pudjiastuti 2011, : Interview ) . Similar views are resonated from Donny Gahril Adian, a Philosophy Professor from the University of Indonesia who works on social issues and philosophies of Indonesia. He argues that the ways in which the Indonesian government decide their foreign policy is influenced by a political culture that sees the issue of migrant workers as a marginal matter, particularly the present government under President Yudhoyono (Adian 2011, : Interview). Although he recognises a more supportive role identification coming from the opposition parties, he also notes that even within the legislatures there are still perceptions that unskilled workers, labourers and domestic workers are not professions and therefore do not need to be included within the national legislation programmes (Adian 2011, : Interview). This particular role perception in the face of unskilled workers, labourers and domestic workers is what both Adian and Pudjastuti suggested influence the government’s policy in regional migrant workers protection.

Along the same line with the academics perspective, Migrant Care, an NGO specifically working on issues of migrant workers and their protection, also voiced similar concerns. Anis Hidayah, the Executive Director, perceives the role of ASEAN at the moment to remain stuck on the normative level, and not yet on a level where a convention can be established. “The Process (to come up with a convention) has stagnated for a while, even the Philippines and Indonesia are unable to push Malaysia to agree,” (Hidayah 2011, : Interview) she claims. According to Hidayah what ASEAN should take is a more imposing role with a Convention and a strong Committee to ensure this. Similar responses have been provided by Harris Azhar of the Indonesian Commission for the Disappeared and Victims of Violence and Rieke Dyah Pitaloka of PDI-P.

Pitaloka adds that in ASEAN this essentially refers to a matter of human rights. How this can be reflected in the protection of Indonesian workers abroad within the framework of ASEAN according to Pitaloka depends on “the agreement to develop and integrate efforts (towards migrant workers protection) together.” She suggests that every member country has to show commitment in upholding human rights in their countries, and this “should be the foundation of ASEAN’s political relations” (Pitaloka 2011, : Interview). Despite this Pitaloka subsequently remarks on the lack of this commitment in human rights promotion in all ASEAN’s member countries. Pudjiastuti adds that in ASEAN the human rights mechanism is held back by the inhibiting nature of non-interference clauses to its implementation, making “most human rights problems regarded as a “bilateral” problem, and thus out of bounds from ASEAN’s regional imposition” (Pudjiastuti 2011, : Interview). Agus Supriyanto, of the National Commission on the Violence against Women, argues that “as ASEAN only has a Declaration, it does not function as an agreement that could be imposing.” “Theoretically it will again depends on the political will of member countries government, that is why ASEAN needs a treaty,” he added, exclaiming that he has strong doubts on the ability of state governments to fashion their political will to accommodate workers rights (and achieve an agreement) (Supriyanto 2011, : Interview).

It is clear that from role perception attributed to the institution of ASEAN most particularly, both major academics and civil society organisations from Indonesia tend to view ASEAN’s role perception on workers migration to be related to agreement on human rights. As for the moment ASEAN’s human rights mechanism is still largely held back by their non-interference clause, causing the development of regional migrant workers protection policy to also be troubled. It is apparent that the civil society organisations and the academics remain to perceive the deciding role for such policy to lie in the hands of individual states, or in the case of ASEAN, its member countries. This in turn led to the

question of how these institutions perceive the roles and identities of governmental institutions within Indonesia's policy making framework. The manner in which the role of the government is perceived by societal institutions is significant as it may influence how it is able to absorb proposals from societal institutions as well as the limits of what societal institutions are willing to propose. In a way role perception by societal institutions towards the limit of government accommodation can provide "constraints" on activities and proposals from societal institutions to the governmental institutions, and consequently disrupting the norms socialisation relevant to the development of ideas supportive to migrant workers protection. Subsequently as suggested by Anis Hidayah and Rieke Dyah Pitaloka, this government institutional level is important to convince Indonesia's good will and commitment to international negotiation on migrant workers. Most of the societal institutions here remark the need for an increased role of governmental institutions to push forward a regional protection policy for, at least, Indonesian workers. Agus Supriyanto from the Commission on Violence against Women had previously pointed out that in a regional institution such as ASEAN what is needed for such an agreement to protect migrant workers to be established is relevant political wills by member states (Supriyanto 2011, : Interview). In this research this particular political will is what I argue can be examined through the dissection of government institutions' identities.

The academics interviewed recognised misconceptions of ideas regarding social protection under the current governmental institutions of President Yudhoyono to be determinant of their role perception. Equally they see that governmental efforts have no systematic support. "Indonesian foreign policy remains to regard Indonesian workers in terms of liberal economic perspective, not in terms of providing social welfare," states Pudjiastuti on the issue (Pudjiastuti 2011, : Interview). "There remains to be mutual interests developing between recruitment agents and the government, and as long as this is still acceptable it is

difficult to push the government (to protect migrant workers),” according to Pudjiastuti (Pudjiastuti 2011, : Interview). Both of the academics maintained that the reason that government institutions had problems adopting ideas supportive to workers rights was down to the current government’s political will. This trend was not merely a matter of political will as viewed by Pitaloka. Rieke Dyah Pitaloka agrees that this particular framework has been occupying Indonesia’s policy making mechanism. She suggests that the government has put aside its responsibility for creating more employment domestically and took comfort in the blossoming business of workers sending. Despite this, Pitaloka claims that this is more a matter of framework choice that can be changed when supportive groups and institutions lobby more regulations to be passed from the legislation (Pitaloka 2011, : Interview). She points out that “the matter of protection itself has been clearly remarked within our constitution at the preamble,” so the correct foundation for the formation of supportive ideas are inherent within the creation of the republic. Jemi Irwansyah of PRP equally provided a similar answer, suggesting that governmental institutions are not equipped with the right framework of protection without prioritising economical benefit to treat workers as an industry (Pitaloka 2011, : Interview). What then surfaced is little priority on the actual protection of workers and more on disputes surrounding scopes of authority, as was the case with BNP2TKI and the DMT.

Another societal institution in the thesis concerns recruitment agencies. From the observation of APJATI (Association of Indonesian Workers Service Corporations) there have been similar concerns on the need to better protect Indonesian workers (Migrant Care Indonesia 2011 ). Despite this APJATI’s main role identification revolves around identities which see the activity of workers sending in the view of “placement” (Migrant Care Indonesia 2011 ; Hamzirwan 2008). Although this falls away from what other societal



institutions perceive, the function embedded within APJATI demands it to be more focused on the business side of migrant workers.

### **Discourses within Societal Institutions in Indonesia**

In this section discourse is viewed by looking at the suggestible behaviour given by societal institutions. What is investigated here specifically relates to discourses surrounding the management of workers migration and migrant workers themselves. A discussion on how societal institutions perceive the discourses of governmental institutions should be is also included.

The PDI-P claims that “(the government can only see) migrant workers as a commodity.” This is a discourse that almost all of the vocal societal institutions point out to be implemented by current governmental institutions. Commodification here is referred to the discourse of perceiving Indonesian workers as a commodity and activities surrounding their migration as a form of business. As a discourse functions to suggest appropriate behaviour to be implemented this discourse of commodification suggest treatments towards Indonesian workers that accommodates their perceived role as an object of business. This particular discourse refers the economic logic of supply and demand which consequently dehumanise the existence of migrant workers. Because they are mainly perceived as a commodity, current workers protection policies reflect the necessity to regulate protection of workers by way of securing the continuation of the business and less of a protection of the nation’s citizens.

As what was claimed by the PRP “the framework that is used remains to be focused on looking at migrant workers as an “industry.” “Although some minimum standard protection has been present, it is strictly for formal workers, and again utilised as a medium to maintain

commodification,” Tommy Pratama of the PRP explains. Rieke Dyah Pitaloka of PDI-P adds that “the current government’s political strategies are not supportive to workers interests. They cause de-industrialisation and de-agriculturalisation,” she adds “policies such as increasing the electricity base rate which forces industries to cut labour and reduce support for farmers which lessens job opportunities has worsened the issue” (Pitaloka 2011, : Interview). Another view similar to this relates the discourse of commodification within the government’s economic development policies which sees migrant workers as a tool for development (Pudjiastuti 2011, : Interview; Adian 2011). Despite similar discourses, differing discourses are still present, especially relating to the best way to tackle migrant workers protection.

Although some discourses are mutually agreed to a certain extent by societal institutions, some discourses differ from one to another. I observed that differing discourses between these societal institutions serve to hamper cooperation effort between them. When consequently this weakens the strength of the societal lobby at the government level, effort to socialise societal norms to government institutions runs the risk of failure. What is uncovered here is that differing discourses can be seen in the way societal institutions perceive the cause of the case to be, which consequently relates to their view of how best to tackle migrant workers protection policy. Especially on the latter issue, I found that different societal institutions can sometimes attain a detrimental view on the possible solution to the issue.

In terms of identifying key determinants of the case there are four main discourses that societal institutions published to their social environment; discourse that holds high hopes on ASEAN and its mechanism, discourse of government institutions’ priorities of scale, on the established system that represses labour interests, and discourses on the privatisation of workers migration. Main advocates of the first discourse are the Indonesian Institute of Sciences and Migrant Care. The supporter of this discourse perceive that it is ASEAN that

needs to strengthen its role in protecting workers in its region, which means the discourse of non-interference needs to be further evaluated.

A stronger human rights and workers protection mechanism is seen to require a more involved ASEAN politically. The responsibility to protect workers would then lie within ASEAN. Discourses of government institutions' priorities of scale view that institutions within the government simply does not prioritise migrant workers policies enough to include sufficient protection mechanisms. According to this discourse then the responsibility to protect is in the individual governments.

The main institutions to see the form of existing discourses are the academic voice represented by Donny Gahril Adian, the National Commission on Violence Against Women and some statements of KOPBUMI (Consortium for Indonesian Migrant Workers Advocacy) (Adian 2011, : Interview; KOPBUMI 2001). The Consortium for Indonesian Migrant Workers (CIMW) particularly voiced the need to abandon reliance of Indonesian workers towards government's protection (CIMW Consortium for Indonesian Migrant Workers' Advocacy 2010). PRP particularly published a discourse that stresses the need to change the overall authority structure in the government to form a more social democratic system. PRP's discourse is especially directed to the fault within the governmental system and depicts the need to change the existing framework altogether. This means the responsibility to protect is imposed in detail by the constitution to the government, while the last discourse on privatisation dealt with the workers sending system that is managed by private recruitment agents. According to this discourse the protection of workers abroad which was given by the government as the recruitment agents' responsibility, should be taken more as the government's responsibility. The sending, placing and protection mechanism is seen by this discourse as something that should be under the government's authority and tight monitoring system. This is a particular discourse supported by the PDI-P and Migrant Care. Nevertheless

differing discourses in this case refer to disagreements in the best mechanism to pursue the regulation of workers protection to the government of Indonesia. Although some societal institutions such as Migrant Care and PDI-P and to a certain extent the National Commission on Violence against Women have been involved in consolidation, I still view the need to consolidate the voices and approaches of all major societal institutions.

Discourses by recruitment agencies are different in the way that they prefer protection policies that maintain a great deal of allowance for the agents to gain financial benefit. Despite existence of protection discourses, APJATI remarks several times that; “The protection of Indonesian workers is not solely the responsibility of the private sector, but equally the responsibility of the government” (Suprpto and Nurlaila 2009). Clashes between the APJATI and officials within the DMT or BNP2TKI have been a prominent feature of the organisation of workers sending. APJATI’s position sees the work of the DMT and BNP2TKI as corrupt, inefficient, negligent and badly coordinated whereas the DMT accuses APJATI of not complying with government laws and regulations on the matter (Sijabat 2000 ).<sup>43</sup> Other than this there was definite effort for APJATI to remain a powerful influence in workers sending and for the control of the DMT to remain minimal. The APJATI Chairman has said that “the government should limit its authority in the policy-making process and provide a better public service to labour exporters and workers to help solve the unemployment problem” (Sijabat 2000). This indicates the economic-oriented nature of the APJATI’s discourse coupled with the view of less government involvement in the issue. It is apparent that discourses for APJATI in this case projects a mechanism of workers protection that is more attached to economic interests surrounding the sending workers, thus similar to the discourse of regarding workers as “business”.

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<sup>43</sup> One of the most famous case of these clashes occurred in May to August 2000 where the Head of APJATI wrote a letter to then President Wahid to fire the DMT Minister Bomer Pasaribu and the then Directorate General on Training and Placement of Indonesian Workers.

#### **V.4. Conclusion**

Both governmental and societal institutions in this chapter present a degree of recognition to workers' need for protection and an institutional characteristic that denounces actions to facilitate this need. It can be noted that the DFA shows identities and discourses that to a certain extent support the creation of a regional policy for the protection of migrant workers (Safari 2011, : Interview). Despite this fact, the DFA's diplomatic exclusivity inherited from the New Order era remained to govern some staff's actions. At the regional level, it is suggested that the DFA does not have sufficient authority to push forward negotiations with other countries unless the government of Indonesia itself formulates a stronger protection policy for all of its workers, abroad or domestically. Unclear line of commands and authority between relevant government institutions, corruption and consular exclusivity (The Indonesia Ministry of Foreign Affairs 2006) renders little policy progress to surface on the protection of migrant workers. In the DFA individual efforts instead of coordinated policies are what drive migrant workers protection at the moment.

Different to the DFA both BNP2TKI and the Department of Manpower and Transmigration (DMT) originated from domestic-centric institutions. The DMT were responsible to manage excess unemployment to support the New Order's ambitious regional supremacy and economic development programme. This made the New Order DMT responsible for the formulation of a migrant workers policy that is focused on achieving economic benefits. When migrant workers sending became a national programme for economic development in 1988, the DMT became the central institution in the identification of migrant workers as a source of national income. Although during fieldwork there exist increasing priorities on ensuring international conventions on migrant workers protection are put forward, this had only surfaced during 2011. The DMT in 2009 had stated that workers

sending from Indonesia was aimed to cease in 2017 (The Minister of Manpower and Transmigration of Indonesia 2012), but in December 2011 this was revoked by the Minister (The Minister of Manpower and Transmigration of Indonesia 2012). This is accused to be a part of the President's political imagery in response to growing societal concerns on migrant workers rights (Pudjiastuti 2011, : Interview; Hidayah 2011). Although on the face the DMT seemingly adopted supportive identities migrant workers protection, image politics undermine the focus and, institution-wise, the DMT remains to carry an economic development lens on migrant workers.

BNP2TKI on the other hand is essentially a new institution that surfaced not directly from an existing directorate within the DMT. Discourses and identities within the institutions still portray contradictory notions to reformist notions, and hence, ideas supportive of workers rights. The positioning of BNP2TKI at the same level of the DMT with certain similar responsibilities resulted in overlapping authorities and ongoing disputes between the two institutions. Until 2010, these disputes had preoccupied the concentration of both BNP2TKI and the DMT with intricate details of institutional authorities that management of workers protection became neglected. This mis-coordination surfaced a discourse of competition of authority between the BNP2TKI and DMT, making both institutions more inclined to focus on gaining more authority instead of perfecting their protection mechanism for Indonesian workers abroad. Although discourses surrounding protection and the need to ameliorate existing protection mechanisms are present in the BNP2TKI the manner in which discourses and behaviours are suggested between relevant institutions render workers protection mechanisms stagnant and lacking in needed reforms.

Societal institutions, on the other hand, mostly have a similar identification of role with regards to workers rights and protection. They also similarly perceive that governmental institutions are not equipped with appropriate role perceptions. Governmental institutions are

perceived to handle migrant workers with economic-oriented motives. “Government’s perspectives are focused on Indonesian works as an economic policy, without recognition of workers interests,” claims Agus Supriyanto who also argues that “the sending of workers remains to be seen as a pragmatic solution to domestic unemployment” (Supriyanto 2011, : Interview). This makes for insufficient adoption of policies to protect workers welfare such as putting workers insurance under a consortium of insurance companies which allows more space for corruption. From policies like these societal institutions remarked that the government has a grave misperception of their responsibility to protect migrant workers. Anis Hidayah suggests that this could be caused by the low level of appropriate institutionalisation and knowledge distribution among governmental institutions. At the moment, although new efforts are continuously being provided it will be difficult to protect workers under the perception of economic benefit as well as with government’s current perception of responsibility to protect (Hidayah 2011, : Interview).

Despite its business-oriented perception of migrant workers, there exist some degrees of APJATI’s genuine concern on the need to protect Indonesian workers. Although APJATI does not have the central function of workers protection, real support towards better protection policies can not only strengthen institutional consolidation but also benefit the maintenance of their business. In looking at the institution’s ability I have some reservations on the institutional abilities to protect within APJATI. Based on APJATI’s concentration it is doubtful that it can allow development of appropriate ideas of social protection towards workers to develop and thus support a coherent and satisfactory protection mechanism. Additionally, when the search for economic benefit became the only focus, the demands of this business directly contradict those of societal institutions, particularly on policy making arenas. These agencies’ strong influence in the government can also present considerable hindrance to processes of institutionalisation from societal institutions to their governmental

counterparts. This not only represents the “disconnect” between the discourse of recruitment agents with those from other societal institutions, but also makes a consolidated effort to propose a viable plan of action to the government considerably more challenging.

These differing discourses on the main reasons of the insufficient protection mechanism of migrant workers are significant to define differences among suggested behaviour societal institutions propose to be adopted as a solution to the issue. The first group of discourses evidently support a stronger and more supranational legal structure most particularly on human rights and workers rights at the ASEAN level to regulate protection of migrant workers. The second group stresses the need to mobilise individual governments’ political will, and suggests little belief that before this particular subject change the protection of Indonesian workers be regulated sufficiently. The third group proposes a more radical view to change the overall framework of governance rather than waiting until the government does so themselves, and the fourth seeks recruitment agents to have less role in workers sending, providing more role for the monitoring effort of the government to take force.

The findings in this chapter share similar tendencies with that found in Chapter IV. Going back to the research question of why a regional policy on the protection of migrant workers in ASEAN is yet to be achieved the chapter confirms the assumption that comparable to the regional level, institutionalisation at the national level of Indonesia shows unsupportive normative structure to migrant workers protection. The trends on identities and discourses as explored in this chapter indicate yet again why the establishment of a regional policy on migrant workers protection has not been accomplished so far.



## **CHAPTER VI**

### **THE OTHER SECOND LEVEL GAME: THE PHILIPPINES PERSPECTIVES ON A REGIONAL POLICY FOR MIGRANT WORKERS PROTECTION**

#### **Introduction**

The last chapter has presented an analysis on the first country case study in this thesis as well as paved the way towards an investigation on the second level games in the case. It provided some indication as to why the formulation of a regional protection policy for migrant workers has not been achieved in ASEAN. After the examination of institutionalisation of migrant workers protection in Indonesia, the thesis moves further into the investigation of a country with similar backgrounds to see whether parallel trends occur. By doing this the thesis can identify more varieties of constraints at the second level games that put pressure on decision makers in the face of a first level negotiation.

This chapter provides an analysis on the second level games within the Philippines. The chapter consists of four main sections; the first provides a short historical background of workers migration from the Philippines and existing policy development, the second examines identities and discourses within governmental institutions in the Philippines and the third provides a review on institutionalisation dynamics in societal institutions in the country with regards to migrant workers protection, while the last section presents a conclusion of the chapter.

## **VI.1. History of Workers Migration in the Philippines**

Spanish colonisation forcibly altered plantation mechanisms to a more favourable system for the Spanish colonial government's capital gains. Forced agriculture and extraction was applied to ensure that only high value crops such as sugar, spice and tobacco were planted and that the sales of valuable minerals such as gold, silver and copper were monopolised by the Spanish colonials (Schurz 1959). Large numbers of Filipino workers were also utilised during this time as forced labour within the Philippines itself or to other areas within the Spanish colonial authority. Starting in 1565 the Spanish colonial authority established the Manila Galleons trade system where trading ships sailed connecting the Philippines to Mexico to transport silk, gold, silver and spices (Commission on Filipino Overseas 2010; Merceme 2007; Cuevas-Hewitt 2008). Within the fleets of ships, traders forced Filipino workers to work on the ships, bringing them along to their trading posts in Mexico. From Mexico the Spanish used Filipino workers to work with the missionaries in Los Angeles and San Luis Obispo, where the rest of these workers found their way to other parts of North America by crossing Mexico to Florida and Louisiana to settle and work in these areas (Migrant Orientation 2007; Alcantara and Greenfield 2005).

American administration introduced a different scheme of capitalism with an agricultural system in the Philippines directed to support elements of the US industries. This brought controlled agricultural systems that were not inherent within the culture of the Filipino rural community. Rural lands previously used to provide staple food such as rice and corn have been turned to export-oriented crop plantations (Migrant Orientation 2007; Larkin 1982; Resnick 1970, 63-64). This removed the rural society from its original function and forced peasants to move from their rural livelihood, increasing rural unemployment in the Philippines. Protests and rebellions against this displacement of farmers forced the US

administration to encourage plantations in Hawaii to employ Filipino worker on a contract basis (De Jong et al. 1983; Mateo 2001), with the help of the Hawaii Sugar Planters' Association (HSPA). Around 1906 Filipino workers were sent to work in Hawaii's plantations on the basis of this agreement (Mateo 2001; Liu, Ong, and Rosenstein 1991; De Jong et al. 1985). As the sugar business flourished, the demand for Filipino workers increased. The number of Filipino workers increased from 150 in the first year to 2,910 in 1910 and over 10,000 in 1919. By 1930 Filipinos had outnumbered the Japanese as the biggest ethnicity in Hawaii, despite the business setbacks (Liu, Ong, and Rosenstein 1991, 490). From Hawaii, Filipino workers were sent to the Western coast of the United States as fruit pickers and ground workers on plantations as well as to Alaska and Northern United States in fish canning industries. This adds to the existing migration network Filipino workers have established since the days of the Manila Galleon. After the inclusion of Hawaii as the 50<sup>th</sup> State of the US in 1959, the Immigration and Naturalisation Law of 1965 means more access for Filipinos to live and work in the US (Alegado 1991, 13-14). By the end of the Second World War workers migration from the Philippines became a profitable business and a way of life.

During the 1970s, the oil boom and Marcos' economic development ambitions made Filipino workers redirect their destination target to the newly blooming economies of the oil exporting countries of the Middle East. Filipino workers, along with other workers willing to do heavy and dirty work, including those from Indonesia, were quick to fill the necessary jobs in the Middle East. Although many of them maintained their jobs as unskilled workers, more Filipino workers moved on to gain qualifications to work as medium-skilled technicians or service providers. In North America and Europe increasingly Filipino workers work as nurses, doctors and medical technicians to fill the demands that could not be filled by available personnel in the regions (Liu, Ong, and Rosenstein 1991; Velasco 2002). The

tradition of working abroad has become historically so profitable that often the children and grandchildren of Filipino migrant workers opted for similar job choices, albeit with a higher educational background.<sup>44</sup> In addition, Filipino women became more mobile in finding job opportunities in more countries in the world than any other worker in Asia (Mission 2003).

Post-colonial Asia equally enjoyed the oil boom and underwent large scale developments in infrastructure, giving way for more jobs to flourish within the construction and manufacturing sector. By the 1980s the Filipino workforce has transformed to fill a specific level of skills. Low or unskilled jobs within their area of employment in the Middle East and Southeast Asia have been dominated by Indonesian or South Asian workers. Their relatively higher education and English skills made Filipino workers more interested to work in other regions other than Southeast Asia with the exception of Singapore and Malaysia to an extent.

#### **VI.1.1. Policy Development in the Philippines**

The 1974 Philippines Labour Code presents the roots of worker protection mechanism in the Philippines (Martin, Abella, and Midgley 2004). Although initial, protection for Filipino workers in this Labour Code revolved around violations of working contract, insurance of a workable place of employment and the facilitation of the labour market. Despite some good intentions, the Labour Code strongly relates to Marcos' intention to encourage overseas employment and promote jobs abroad (Tyner 2000 (b)). This aligned itself to overall economic and development growth (Khan 1988; Adler 1986). Filipino workers were portrayed as cheap, docile, and subservient (by the way they are prevented to

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<sup>44</sup> During my fieldwork visit to the University of the Philippines in Manila I came across a series of young university students who, despite their degree in politics or history and their exceptional essay work, still have the goal to work abroad as nurses.

go on strike), as it is attractive to the world labour market. In the Labour Code Article 3 it stated that the “state shall afford protection to labour or promote full employment and ensure equal opportunities” (The President of the Philippines 1974, : Article 3). Article 17.2 reiterates that there needs to be “the best possible terms of conditions of employment” for Filipino workers.

The responsibility to implement the Labour Code was given to the Overseas Employment Development Board (OEDB) and the National Seamen Board (NSB). The two bodies were established under the Code to “promote the systematic program for overseas employment of Filipino workers” (Ruiz 2008 1). Another institution was created to not only equip workers with appropriate skills but also address welfare matters that may arise. The body, named the Welfare and Training Fund (The Office of the President of the Republic of the Philippines 1977), functions to provide social and welfare support for Overseas Filipino Workers (OFW) including insurance coverage, legal assistances, education and skills training as well as cultural teaching, among others (The Office of the President of the Republic of the Philippines 1977).<sup>45</sup> This shows different development to the case of Indonesia, as the Welfare Fund for Overseas Workers represented the state’s recognition of the welfare consequences of migrant workers. In addition, funding resources complementing the Welfare fund from the NSB and OEDB as well as Department of Labour and Employment (DOLE) means the Fund appears to have sufficient coverage to fulfil its purposes.

Through the Labour Code the government established ground rules for the recruitment and placement of workers by putting all the responsibility in the hands of the government. A

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45 The Welfare and Training Fund was instructed to cover the purpose of “1. To provide social and welfare services to Filipino overseas workers, including insurance coverage, social work assistance, legal assistance, placement assistance, cultural services, remittance services and the like; 2. To provide skills and career development services to Filipino overseas workers and their placements in order to insure adequate supply of manpower for national economy as well as for export; 3. To undertake studies and researches for enhancement of their social, economic, and cultural well being; and, 4. To develop, support, and finance specific projects for the benefit of Filipino overseas workers.”

four year phase out for existing private recruitment agencies was created, banning direct hiring by foreign employers and imposing obligation over remittances (Battistella 1999, 229-230). Recruitment agencies were renounced in 1978 although the government maintained a tight regulative and supervisory role (Asis 1992, 69-70).

The POEA was established in 1982 to take over the functions of the OEDB and NSB, bringing the management into one united body. The Welfare Fund of Overseas Workers was replaced by the Overseas Workers Welfare Administration (OWWA) in 1987, allowing an independent body outside DOLE to be responsible for the fund. It indicates, not only that there has been a growing concern to protect migrant workers, but also the funding to manage their welfare. This happened as Marcos' rule just ended and the rule of Corazon Aquino brought more liberal reforms. Although the OWWA's establishment was in part a product of the growing Post-Marcos anti-corruption sentiment, both Marcos and Aquino maintained similar approaches in regulating the protection of Filipino workers abroad. When the rule of President Fidel Ramos started in 1992, migrant workers were made as a mode to support the country's economic development. Further bilateral talks with destination countries were conducted during this period to ensure supply portrayed the government's expanding role to include market expansion.

Cases of mistreatment and violence against Filipino workers were increasingly sensitive to politicisation, which then pressures the government to revise existing regulative mechanisms. The main examples for such cases are the case of Maricris Sioson, a performing artist who suspiciously died in Japan in 1991 (Aguinas and Ruiz 2007, 8), added to the case of Sonia Panama, a Filipino maid who died after being hospitalised for a month in Kuwait in 1993 (Gatmaytan 1997, 233), and the case of Sarah Balabagan who was sentenced for lashing in United Arab Emirates for allegedly murdering her employer (Gatmaytan 1997, 234). The rising controversy surrounding the case of Flor Contemplacion put more pressure on the

Filipino government to come up with revisions to the previous form of regulation (Hilsdon 2000, : Chapter 8, pp.167-171).<sup>46</sup> The Migrant Workers and Overseas Filipino Act 1995 RA 8042 represented the culmination of these revisionary efforts. This Act embodied three major trends in the protection of migrant workers; One, that the state is obliged to fully finance the protection of their workers abroad physically, legally and at their return home; two, that a more gender sensitive rapport needs to be included by the government in their policies; and three, that there was a conscious effort to not employ migrant workers as a tool to sustain the country's economic growth and development (Ruiz 2008 3).

The Act in 1995 instituted “the policies of overseas employment and establish a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress” (The Parliament of the Philippines 1995, : Preamble). The law symbolises the government's progressive effort to cover the basic needs of Filipino workers welfare overseas although some parts remain to be limited in implementation. Clauses on destination countries' responsibility to ensure protection have no real consequences to the destination countries themselves (Battistella 1999, 266). This demands the efficiency of Filipino diplomats in bargaining for the implementation of welfare regulation for Filipino workers. To aid this the government created the Migrant Workers and Other Overseas Filipino Resource Centre with the help of Legal Assistant for Migrant Workers Affairs under the Department of Foreign Affairs to ensure the protection of their overseas workers when abroad (Battistella 1995, 267). This places the pressure to diplomats and the Secretary of Foreign Affairs and the Philippines Foreign Service to put their overseas workers as their “highest priority” (Battistella 1995, 268).

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<sup>46</sup> Flor Contemplacion was a Filipino worker working in Singapore where she was arrested for the murder of her friend and fellow worker, Delia Maga and her employer's child in 1991. Events surrounding her arrest were distorted, including the condition in which Maga's employer's child was reportedly drowned after an epileptic shock. Contemplacion was also allegedly forced and drugged into a confession without her lawyer present.

Within the years following the 1995 law, the Philippines government has increasingly portrayed a largely business oriented view on the handling of workers migration (Battistella 1995, 268). Within the addition of the 1995 Law, regulations are drafted to allow agencies to charge workers, including for insurance and placement fees. The Law also drafted programmes to prepare workers who are intending to work abroad. All of these signal the growing privatisation of migrant workers management. This suggests that there are existing structures in the Philippines that may give more support to the ideas of utilising migrant workers to gain economic benefit instead of perceiving migrant workers as fellow nationals that need social protection.

In the next section I include further investigation on the identities and discourses of institutions within the Philippines in order to see the institutionalisation processes that led to delays in the regional ASEAN protection policy for migrant workers. In this second level “games”, similar to the case of Indonesia, there are governmental and societal institutions that influenced perception and directives towards migrant workers protection at the regional level, thus, providing constraints for decision makers in the face of such policies. The next sections examine pressures from both governmental and societal institutions. Informed by the operationalisation section in Chapter III the discussion in this section focuses on examinations on identities and discourses within relevant governmental and societal institutions of the Philippines with regards to the regulation of migrant workers protection. As Chapter III has elaborated, identities will be examined by way of looking at institutions’ role perceptions, particularly whether they see their role as protectors of migrant workers rights. Furthermore under the framework of identities I also seek to see the extent of which institutions identify themselves in the wider system of workers migration and whether or not they identify migrant workers as an entity in need of social protection of their own right as the country’s citizen. Discourses will be investigated by way of investigating the manner in



which institutions publish and suggest particular directives to their members' actions or in other words socialise the institutional normative ideas. By looking into these directives I can measure the level of which relevant institutions actually support appropriate ideas of workers protection.

## **VI.2. Identities and Discourses within Governmental Institutions**

Within the category of governmental institutions in the Philippines I have looked at the identities and discourses within the DFA (Department of Foreign Affairs), POEA (The Philippine Overseas Employment Administration), OWWA (Overseas Workers Welfare Administration) and the DOLE (Department of Labour and Employment). To see their identities, what is assessed in this section is how these institutions perceive their role in the protection of workers and to the extent they entrust the role of workers protection to the mechanism of ASEAN. The extent of which they identify the need to protect migrant workers abroad is also a significant indicator to gauge the true form of the institutions' identities. Matters relating to the institutions' discourses focuses on how governmental institutions suggest behaviour towards workers protection should be and particularly how to look at migrant workers.

### **VI.2.1. Identities and Discourse within the DFA**

The DFA clearly identified a belief in the importance of ASEAN, as could be seen in the DFA's "policy realities" realisation which defines how "the Philippines foreign policy must be made within the context of ASEAN" (The Philippines Department of Foreign Affairs 2012, : Philippine Foreign Policy, Official Website). Although this role perception is

significant, what is more important is the distinct and conscious role perception as a provider of protection mechanism for their workers abroad.

### **Identities in the DFA**

Compared to the Indonesian DFA, there are few observed prominent trends in the role perception of the Filipino DFA with regards to the protection of workers. The Philippines DFA's foreign policy definition as based on the Philippine Foreign Service Act 1991 where the three main pillars of foreign policy was defined as:

“preservation and enhancement of national security, promotion and attainment of economic security and protection of the rights and promotion of the welfare and interest of Filipinos overseas” (The Philippines Department of Foreign Affairs 2012, : Philippine Foreign Policy, Official Website).

This shows how the formal role identification of the Philippines DFA is supportive to the idea of protection for its citizens abroad, including the country's migrating workers. Although a similar statement has been released by the Indonesian DFA within its statement of functions, differences in role perceptions are present. The Philippine DFA identified their role further by stating that DFA are the “partners of Filipino overseas in the pursuit of the national interest and in the promotion and protection of their rights and well-being” (The Philippines Department of Foreign Affairs 2007, : Vision and Mission, Official Website), with the objective to “protect the rights and promote the welfare of Filipinos overseas and to mobilize them as partners in national development” (The Philippines Department of Foreign Affairs 2007, : Vision and Mission, Official Website). This significantly differs with the Indonesian DFA which focuses more on foreign diplomacy and a positive image, putting the idea of the protection of Indonesians abroad widely as; “to provide better services which are prompt,

courteous, simple, transparent, and accountable in protocol, consular, diplomatic facility and protection of Indonesian citizens/Indonesian legal entities overseas” (The Ministry of Foreign Affairs of Indonesia 2009, : Mission of the Ministry of Foreign Affairs of Indonesia, Official Website). Although at first glance these role perceptions may have touched upon similar concerns the Filipino DFA accounts their responsibility to protect the rights and promote welfare of Filipinos in more specificity.

The DFA in the Philippines functions as an integral part of the country’s established system of workers sending, with close coordination with the POEA and the DOLE. Since the establishment of the Labour Code in 1974 the DFA has been mandated with the responsibility to “provide ample protection to the Filipino workers abroad” (The President of the Philippines 1974, : Article 21). Since the release of the Republic Act No. 8042: Migrant Workers and Filipino Act in 1995 the Philippines government limited the sending of their workers to countries whereby certain conditions are present:

- “(a) It has existing labour and social laws protecting the rights of migrant workers;
- (b) It is a signatory to multilateral conventions, declaration or resolutions relating to the protection of migrant workers;
- (c) It has concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers; and
- (d) It is taking positive, concrete measures to protect the rights of migrant workers” (The Parliament of the Philippines 1995, : Chapter 1, Section 4).

To ensure that destination countries met protection criteria the DFA has the mandate to issue certification to the POEA regarding the state of the receiving countries’ human rights and workers rights clauses (The Philippines House of Parliament 2009, : Section 3). The DFA also has labour attaches in major receiving countries which cooperate with Filipino civil societies abroad to tackle Filipino workers issues. Institutionally the DFA is equipped with a section specifically designated to deal with issues of migrant workers, the Office of the

Undersecretary for Migrant and Workers Affairs (OUMWA). This office reports directly to the Secretary of Foreign Affairs of the Philippines and functions to “aid the Secretary of Foreign Affairs and provide advice on matters relating to the formulation and execution of Philippine foreign policy relating to the protection of the dignity, fundamental rights and freedoms of Filipino citizens abroad, while giving particular attention to the protection and promotion of the welfare and dignity of overseas Filipinos” (The Office of the Undersecretary for Migrant Workers and Workers Affairs 2012, : Official Website). These few particular features, until the time that this thesis is written, have not been sufficiently present in the Indonesian DFA. Although a general Directorate for the Protection of Indonesian Nationals and Legal Entities exists in the Indonesian DFA it has only been established in 2001 and it is not particularly specified for the protection of Indonesian workers. In terms of foreign policy vision, it is apparent that the Indonesian DFA lacks the concrete orientation towards workers protection, in comparison to the Philippines DFA.

According to Nymia Simbulan of PhilRights, a civil society group dealing with human rights; “(for the case of the DFA) institutionally there are good efforts to protect Filipino workers abroad, such as more labour attaches to receiving countries” (Pimentel-Simbultan 2011, : Interview). Simbulan further remarks that one of the bases of these actions by the Philippines government lies in the fact that the government pushed to ratify the UN Convention for The Protection of the Rights of All Migrant Workers and their Families of 1990. She suggested that this fact ultimately increases the Filipino position internationally with regards to violations towards their workers rights abroad (Pimentel-Simbultan 2011, : Interview).

In Filipino workers migration the DFA adopts the role of monitoring and negotiating for the protection for Filipino workers abroad is equally important. The DFA is equipped with appropriate identities to accommodate the protection of migrant workers. What is found

to be the issue with the DFA's monitoring function is that most responses remain reactionary. This is admitted by the special assistant to the OUMWA Estrella Roman, who claimed that problems of lack of personnel were behind this predicament along with the inexistence of a quick response unit in the DFA (GMA News Online 2008).

### **Discourses within the DFA**

Discourses within the Filipino DFA tie closely with their role perception to protect their workers abroad, redefined within the Migrant Workers and Overseas Filipinos Act of 1995. Although previously within the Labour Code 1974 the DFA has been given with the responsibility to protect migrant workers abroad, DFA's discourses on workers protection can be found within the position of the Filipino state as found in the Migrant Workers and Overseas Filipino Act of 1995 section 2. This clause suggests that in pursuit of an independent foreign policy; "the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general and Filipino migrant workers, in particular" (The Parliament of the Philippines 1995, : Section 2, Article a). Consequently this means that "the State shall afford full protection to labour, local and overseas, organised and unorganised, and promote full employment and equality of employment opportunities for all" (The Parliament of the Philippines 1995, : Section 2, Article b), thus placing full responsibility to protect Filipino migrant workers to be given to the hands of the government.

DFA in the representation of its ambassadors are given the coordinating responsibility for the government's protection effort abroad under the country-team approach (The Parliament of the Philippines 1995, : Chapter VI, Section 28).<sup>47</sup> In the Act it is mentioned

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<sup>47</sup> This discourse leads to the pointing of the foreign services of the DFA as coordinators of the 'country-team' where "all officers, representatives and personnel of the Philippine government posted abroad regardless of their

that “the protection of the Filipino migrant workers and the promotion of their welfare, in particular, and the protection of the dignity and fundamental rights and freedoms of the Filipino citizen abroad, in general, shall be the *highest priority* concerns of the Secretary of Foreign Affairs and the Philippine Foreign Service Posts (The Parliament of the Philippines 1995, :Chapter VI, Section 27). These particular clauses of section the DFA promoted their discourse to regard “(protection of overseas workers) as the Highest Priority” of the DFA’s foreign policy work. This discourse of “Highest Priority” became the DFA’s central discourse which appears in official publications. Although the terminology is presumably set to include generally all “overseas Filipinos,” the statement of then Secretary of Foreign Affairs Alberto G. Romulo of overseas Filipino included “Filipinos from all walks of life, all professions, every level of skills, both sexes and all ages. They are the Filipino crewmembers aboard the ships of global commerce [...]they are the engineers, architects and construction workers[...]they are the Filipino doctors, nurses and caregivers..they are the household service workers.” (Romulo 2009). This made the definition of overseas Filipinos closely tied to the idea of Filipino migration for work and included the idea of workers protection within the protection of overseas Filipinos.

Another discourse in this concentration is the discourse of Filipino workers as “New Heroes” or *Bagong Bayani*, which is popularised by the statements of President Aquino. The discourse of “New Heroes” first appeared under the President Aquino when she addressed Filipino workers in Hong Kong in 1988 stating “Kayo po ang Bagong Bayani” which means “you are the new heroes” to the workers (Fajardo 2011, 84). At the time when it was published the discourse related Filipino workers with the importance of remittance they gain

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mother agencies shall, on a per country basis, act as one country-team with a mission under the leadership of the ambassador....to provide the necessary services to protect the rights of overseas Filipinos.”

to the development of the Philippines in general.<sup>48</sup> This discourse of “New Heroes” is particularly different from the “foreign exchange heroes” discourse brought about from the Indonesian side. This Filipino discourse is more integrated consistently within all relevant institutions whilst the Indonesian discourse of foreign exchange heroes represents a New Order era initiative hardly used in the recent government’s institutions. This discourse of migrant workers as “heroes” elevated their image from low unskilled workers to significant resources for not just the government’s economic benefit, but the nation’s welfare.

In the time of the Asia crisis of 1997 the discourse of new heroes lifted Filipino workers’ image in society as their remittances helped the Philippines economy to remain stable (Pimentel-Simbulan 2011, : Interview). This in turn relates the discourse to the idea of workers as an economic development tool, similar to what drove the Indonesian workers sending mechanism to commodification. What is particularly different in the Philippines is that the discourse of sending workers for economic development does not put aside a people oriented approach by the government. The work as an overseas worker in the Philippines is also widely accepted in the Filipino community, more so than Indonesian workers who are perceived more as low class and uneducated. In the Philippines working overseas has been accepted widely as a formal and legitimate line of work. From an interview with students of the University of the Philippines Manila I found that even university graduates preferred to take up nursing jobs abroad, despite being educated in different subjects (Karganilla 2011, : Interview). This also feeds the assumption that Indonesian workers are less educated than their Filipino counterparts, making less skilled jobs available for them. On the other hand job

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48 The latest data notes that until 2010 remittances brought home by Filipino workers account for 10.73 percent of the country’s GDP, which is already decreasing from 2009’s 11.74 percent and 2005’s 13.16 percent (The World Bank 2010). With a GDP of 224 million US Dollars in 2011, it means that Filipino workers alone brought more than 22 million US Dollars worth of remittances, making migrant workers a valuable resource of income (The World Bank 2011).

markets for Filipino workers have included trained nurses and caregivers, doctors, architects, IT professionals and even managers.

Another discourse in the DFA is the stress on a people oriented approach such as workers protection and human rights. This can be found within the vision of the Filipino DFA, compared to its Indonesian counterpart. When the Filipino DFA “vision” entails its role “to advance the interests of the Philippines and the Filipino people” (The Philippines Department of Foreign Affairs 2007, : Vision and Mission, Official Website), the Indonesian DFA has a limited “to advance national interest through total diplomacy” (The Ministry of Foreign Affairs of Indonesia 2009, : Vision of the Ministry of Foreign Affairs of Indonesia, Official Website). At the level of ASEAN the DFA has also brought about discourses of migrant workers protection and human rights in the region. In 2006 under the Philippines chairmanship these discourses were released to the ASEAN member countries, pushing the signing of the ASEAN Declaration for the Promotion and Protection of the Rights of Migrant Workers (Luci 2006). Other than the regional level discourses the DFA has also been active in the Global Forum on Migration and Development (GFMD) hosted by the Philippines on October 2008. The Philippines Secretary of Foreign Affairs, Alberto G. Romulo stressed that the “migrant population is a vital dimension of globalization since it involves the welfare and growth of both migrants population and the nations that receive them...migrant workers also contributed immensely to their host nation,” [which based why] “The essential vision of the GFMD Process, therefore should be to improve the human rights protection and welfare of migrant workers and their families...” (Romulo 2008).

Internationally the discourse of the DFA to promote the protection of Filipino workers is overall supported by the ratification of the UN Convention for the Protection of Rights of All Migrant Workers and their Families of 1990 which was ratified by the Philippines in 1993. Although it does not necessarily contain a specific discourse this particular ratification



meant that the civil society, migrant workers community and government institutions were not only committed to protect the rights of Filipino workers abroad but are also empowered by the support of the international standard of treatment they abide to.

The identities and discourses of the DFA discussed in this chapter indicate more support towards the regional level protection policy for migrant workers, especially compared to the DFA in Indonesia. Although more identities and discourses indicate support, there are still some that are not as supportive. This signifies the lack of idea consolidation and one of the reasons why it has not been possible to come up with an ASEAN level migrant workers protection policy.

## **VI.2.2. Identities and Discourses within the POEA**

### **Identities in the POEA**

When the DFA represents the monitoring and negotiating body for Filipino workers abroad, the POEA provides a more practical regulatory side of the Philippines workers placement and protection mechanism. Because it was created from three bodies of regulation,<sup>49</sup> The POEA had a vast responsibility from negotiating overseas employment, accreditation, sending migrant workers and foreign employment to monitoring that all actors adhere to the rules set of Filipino government bodies. In short, the POEA plays a central role in the event of workers migration, with the help of the DFA and the DOLE. Any workers intending to work abroad has to not only go through a process of documentation and registration within the POEA, but also show that they have complied with requirements set

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<sup>49</sup> The Overseas Employment Development Board (OEDB), the National Seaman Board (NSB) and the Bureau of Employment Services (BES).

by the body (Orbeta Jr. and Abrigo 2011, 12-14).<sup>50</sup> The same applies for any recruitment agencies, domestic or foreign, before they can employ Filipino workers. The body's role perception, on the other hand, is a matter of contradictions. The POEA was initially created to facilitate government's economic development interest (Asis 1992). The role then became ambiguous after the case of Flor Contemplacion in 1995 and the statement that the state "does not promote overseas employment as a means to sustain economic growth and achieve national development" (The Parliament of the Philippines 1995, : Chapter I, Section 1(c)).

The crucial role of the POEA is as a channel through which domestic and international parties of overseas employment interact. POEA's role is to match the type of workers foreign employers seek and specification of recruitment agencies at home, as can be found in the POEA's function of Client Referral Assistance (CRA) (Tyner 2000 (b), 67).<sup>51</sup> This means that the POEA is responsible to impose standards over both the Philippine based agencies and foreign employers as well as possessing a channel of enforcement towards both parties to ensure workers protection abroad. This is why the right role perception to support workers protection is vital in the POEA. Although some notions of protection appear, the POEA's official publications portray a role to ensure workers quality and standards and to provide employment for Filipinos. This is overall embodied within the definition of the POEA's role to "(be) a culturally sensitive, customer driven and business oriented advocate of the Overseas Filipino Workers' well-being" (Regalado 1999, 2), and "a costumer-focused quality policy....continuously improve our services for our internal and external costumers using international standards ISO 9001 (2000)" (Baldoz 2002, 2).

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<sup>50</sup> This process does not only require workers to submit elaborate documents to show their competencies and employment at destination countries, they also have to show proof of attendance of pre-departure seminar (PDOS) organised by the POEA or local NGOs aside from all medical reports and insurance requirements.

<sup>51</sup> Within the CRA program which started in 1985 foreign employers contact the POEA with specific requests of the type of workers needed. The POEA then provided a list of three recruitment agencies based on a match between specialisation and the type of workers requested. These three agencies then make bids for the job to the foreign employer, where further development of the two parties' agreement is negotiated through the POEA. Only the most reputable agencies will be allowed participation to such programs.

The POEA is created under the legal mandates of the Executive Order 797 (The President of the Philippines 1982 ). According to the POEA's perception of these mandates the role of the body consists of two main subjects; the promotion and development of an overseas employment program and the protection of the rights of migrant workers (The Philippine Overseas Employment Administration 2005). Within this order, the reason for the creation of the POEA circled around the idea of economic development; "under the new Republic, national economic development shall be pursued with renewed vigour and greater determination" (The President of the Philippines 1982 : Preamble). Although the order mentions the ideas of protection, it is clear the role of the POEA is set mainly to managing recruitment, placement and workers employment. This is also found in the amended Presidential Decree No.442 into the function of the POEA:

- “(a) Regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system
- (b) Formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements” (The President of the Philippines 1974, : Chapter 1, Article 17).

These facts suggests that the POEA has role perceptions that focus on the management of recruiting and placing workers abroad, and less on the protection of these workers. The mission of the POEA in 1988 first edition of the Overseas Employment Info Series is stated as to “equip itself with suitable surplus labour to fill demand trends and to ensure that no one market spoils (Filipino workers’) overall image and/or blocks[...]entry to newly emerging opportunities” (The Philippine Overseas Employment Administration 1988; Tyner 2009).

Another of these managing role of the POEA is what is governed with the Executive Order No.247 on the Reorganizing of POEA and Other Purposes (The President of the Philippines 1987). According to the order POEA's role also includes among a list of others, to “protect the rights of Filipino workers for overseas employment [...] and ensure their

welfare,” “exercise original and exclusive jurisdiction to hear and decide all claims arising out of an employer-employee relationships by virtue of any law or contract,” and “promote and protect the well-being of Filipino workers overseas” (The President of the Philippines 1987, : Section 3, Article (b),(d) and (j) consecutively).<sup>52</sup> The POEA’s interpretation of their role in this is summarised as; “regulate private sector participation in the recruitment and overseas placement, maintain registry of skills and secure best term of employment for Overseas Filipino Workers” (The Philippine Overseas Employment Administration 2005, : About Us, Official Website). This interpretation shows that POEA’s role perception is more as a placement and management component of workers sending rather than protection. In addition, the main substance of the role to protect workers abroad is tied to the protection of the right to secure employment.

“it is the policy of the Administration:...a) To uphold the dignity and fundamental human rights of Filipino migrant workers and promote full employment and equality of employment opportunities for all; b) To protect every citizen desiring to work overseas by securing the best possible terms and conditions of employment”(The Philippine Overseas Employment Administration 2002, : Part I, Rule I(a) and (b)).

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52 Full list of the role and function of POEA can be seen in the Executive Order 247 on the Reorganising of the POEA and for Other Purposes Section 3. Includes:

- Exercise original and exclusive jurisdiction to hear and decide all claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment including the disciplinary cases and all preemployment cases.
- Maintain a registry of skills for overseas placement;
- Recruit and place workers to service the requirements for trained and competent Filipino workers by foreign governments and their instrumentalities and such other employers as public interest may require;
- Promote the development of skills and careful selection of Filipino workers;
- Undertake overseas market development activities for placement of Filipino workers;
- Secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith;
- Promote and protect the well-being of Filipino workers overseas;
- Develop and implement programs for the effective monitoring of returning contract workers, promoting their re-training and re-employment or their smooth re-integration into the mainstream of national economy in coordination with other government agencies;
- Institute a system for ensuring fair and speedy disposition of cases involving violation or recruitment rules and regulations as well as violation of terms and conditions of overseas employment;
- Establish a system for speedy and efficient enforcement of decisions laid down through the exercise of its adjudicatory function;
- Establish and maintain close relationship and enter into joint projects with the Department of Foreign Affairs, Philippine Tourism Authority, Manila International Airport Authority, Department of Justice, Department of Budget and Management and other relevant government entities, in the pursuit of its objectives. The Administration shall also establish and maintain joint projects with private organisations, domestic or foreign, in the furtherance of its objectives

The notion of “protection” here is tied to the activity of employment and the idea that overseas employment is something that everyone should have “the right” to. Despite this fact, it is notable that the notion of protection and the need to ensure the welfare of workers are included within the POEA’s function. Although the identities that created the institution were centred on the management of sending workers abroad as an economic development strategy, the inclusion and admission of more protection clauses to the POEA depicts either a greater realisation in the part of the institution or greater effort to accommodate workers welfare voices.

### **Discourses of the POEA**

In the first few years of the observation between 1999 and 2001 the main discourses of the POEA can be extracted from the institution’s official reports. Discourses within such reports during this period displayed the institution’s remaining focus in the business of workers employment abroad:

“POEA, at the dawn of the third millennium, shall proactively gear up to respond positively and effectively to fresh challenges. This, we are avowed to do being a culturally-sensitive, customer driven and business-oriented advocate of the overseas Filipino workers well-being today and in the years to come” (Regalado 1999, 2; The Philippine Overseas Employment Administration 2000).

The discourse indicates the nature of protection mechanisms in the POEA. Although at first glance the focus of the discourse is on fashioning workers well-being, the ties between this notion and business orientations present significant doubt. This is redefined in Executive Order No.797 where workers protection is viewed within employment effort; “the attainment of national goals is contingent among others on the development of employment opportunities, the protection of workers, and the promotion of industrial peace” (The

President of the Philippines 1982 : Preamble). This discourse suggests that workers protection is only a concern to the extent to which it can determine employment opportunities preservation and the overall overseas employment scheme.

The POEA's discourses also suggest a focus on the function of providing employment for Filipino people as is stated in its mission to "ensure decent and quality employment for overseas Filipino workers" (The Philippine Overseas Employment Administration 2001). From this statement the function of the POEA is suggested to be solely at the service of workers who are in demand for jobs and employment. The intention to migrate and work abroad in this discourse is perceived to be wholly the decision of individual workers, suggesting that it is the demands of workers (and not the economic interests of the state) that determine the functions of the POEA. "The Overseas Employment Program has remained a viable source of gainful employment and productive pursuits for hundred thousands of Filipino workers" (The Philippine Overseas Employment Administration 2005, 6), and therefore "POEA has never wavered from moving forward and continue facilitate the access of workers to decent and productive employment overseas" (The Philippine Overseas Employment Administration 2005, 6).

As the POEA was not specifically designated to regulate the protection of workers, the main discourses within the POEA remain to be the generation of better employment and standards requirement. The POEA Chair in 2003 summed this intention by stating that;

"The immediate challenge and task of the POEA is to focus on creating a body of professionally trained, skilled, IT literate overseas workers." (The Philippine Overseas Employment Administration 2003, 4).

All in all it is suggested that "POEA must assume the greater responsibility of seeing to it that the OFW eventually becomes an active and productive member of his local community

and the global family of migrant workers without losing in the process, his identity as an overseas Filipino worker and a citizen of his country” (The Philippine Overseas Employment Administration 2003, 4).

This leads to the next discourse regarding the responsibility to protect. As previously pointed out the discourses on protection in the POEA is articulated within the framework of employment and placement of Filipino workers. Another discourse in the institution suggests that the matter of protection is not mainly the responsibility of the state and their institutions directly but also down to each worker themselves. James Tyner suggests that discourse within the POEA has moved from “new heroes” to a discourse where “the empowerment of the workers populace in making well-informed decisions for which they will be held responsible has been and is a key recognition” (Casco 1995, 147; Tyner 2000 (a)). Workers protection is regarded here as more an effort to provide workers and potential workers with full information of through the policy of “full disclosure” where information of wages and relevant conditions are released to allow workers to make correct and informed decisions on their employment. The POEA’s function in this protection mechanism is to “empower” workers in their decision by way of providing and verifying information and imposing and maintaining standards (Tyner 2000 (a)). This relates back to the suggestion that employment abroad is the choice of Filipino workers, not the government’s idea. This is why most of the protection mechanism released by the POEA surrounds information and training. What according to the POEA is included within the protection function of the institution is involved in are;

- Intensifying public education and information campaigns
- Conduct pre-employment orientation and anti-illegal recruitment seminars nationwide

- Conduct Pre-Deployment Orientation Seminars (PDOS) to workers hired through the government-to-government arrangement and name hires
- Provide technical assistance in the drafting of bilateral and multilateral agreements
- Provide legal assistance to victims of illegal recruitment
- Prepare OFW global mapping and profiling
- Implement gender-sensitive programs
- Network with non-government organisations, workers organisations, etc.
- Provide repatriation assistance (The Philippine Overseas Employment Administration 2005, : About Us, Official Website).

This discourse of empowerment of the professional workers community is what the POEA articulated within its Annual Report in 2006. “As more and more Filipinos choose to explore work opportunities abroad, globalisation has opened up the world’s doors to accommodate them more readily” (The Philippine Overseas Employment Administration 2006, 6). The task of the POEA as suggested in this publication is the management of working Filipinos or those who decide to take on working opportunities. “When our countrymen opt to work abroad, our role is to provide them with a policy environment and an integrated package of services that will not only facilitate their deployment, but more importantly, will also lay the groundwork for a gainful and protected employment option” (The Philippine Overseas Employment Administration 2006, 6).

Identities and discourses in the POEA show again that the governmental institution indicates more support towards workers migration as an economic policy than to provide better social protection for migrant workers. This portrays the difficulties in consolidating ideas on migrant workers protection and again illustrates why ASEAN level migrant workers protection policy has been hard to achieve.



### **VI.2.3. Identities and Discourses within the OWWA**

The OWWA originated from Presidential Decree No.1694 and Letter of Instruction No.537 of 1977 on a “Welfare and Training Fund for Overseas Workers” (The Office of the President of the Republic of the Philippines 1977). This fund was established to provide social welfare for Filipino workers which included insurance, legal and social assistance (The President of the Philippines 1977), and gets its fund from the Overseas Employment Development Board (OEDB), Bureau of Employment Service (BES) and the National Seaman Board (NSB) (The Overseas Workers Welfare Administration 2012, : About Us, Official Website). The OWWA was created under President Corazon Aquino’s Executive Order No.126 of 1987 where the Welfare and Training Fund (or known more as Welfund) was renamed as the Overseas Workers Welfare Administration (The President of the Philippines 1987, : Section XIX). Although it has a separate office the OWWA is a part of the Philippines DOLE.

#### **Identities in the OWWA**

Although the scope of work of the institution has expanded, the function of the OWWA and its identity was defined by the Presidential Decree 1694 of 1977 that creates Welfund. The institution’s identities within the Presidential Decree depicts a role that sides both with the economic concerns of the nation and the awareness of threats against the welfare of overseas workers. This was apparent from the institution’s governing texts:

“the overseas employment development of the Government undertaken through the Ministry of Labor has generated an explosion of the presence abroad of the Filipino workers, now estimated to be around 1.7 million in 107 countries of the world....., because of the volatile situation in many countries hosting this labor force, the Government is continually under stress in efforts to provide overseas Filipino workers adequate protection” (The President of the Philippines 1977, : Preamble).

What governs the functions of the OWWA also lies in the Letter of Instructions No. 537 of 1977. The role perception ranges from “(to) protect the interest and promote the welfare of Filipino overseas workers [...] provide social and welfare services to Filipino overseas workers” to “provide skills development services for Filipino overseas workers” and “to undertake studies and research for the enhancement of their (migrant workers) social, economic and cultural well-being” (The President of the Philippines 1977, : Section 1, Article (1), (2), (3), (4) and (5)).

The institution’s identities are acknowledged by the role perceptions that assume several important values; the understanding of the need to provide welfare protection for migrant workers, and, also that protection requires the generation of a large amount of funding. The OWWA’s role is focused on the management of this fund. In the wider spectrum of migrant workers rights management in the Philippines, the OWWA has two main functions; managing and ensuring the stability of financial support, and to provide services relevant to the effort of workers welfare, including training and education grants. Another major role of the OWWA lies in its function as a contingency fund for large scale repatriation, if and when the need surfaces (Aguinas and Ruiz 2007, 13). This is embodied within the program of the Emergency Repatriation Fund for Overseas Filipino Workers in case of wars, disasters or epidemics. Within the 1995 Migrant Workers and Overseas Filipino Act an amount of US\$2 Million was prearranged for the purpose of repatriation and evacuations (The Parliament of the Philippines 1995, : Section 15). A form of life and personal accident insurance is also made available by the OWWA for Filipino workers abroad. This insurance provides cover for natural death, accidental death to burial benefit as well as work-related injuries, illness and disabilities during employment abroad (Aguinas and Ruiz 2007, 15). These mechanisms show that the OWWA has appropriate mechanisms that suggest the idea of migrant workers protection. What will be subsequently important is the

manner in which the institution realises this role by way of application and utilisation of these mechanisms beyond the formal quarter.

The OWWA is essentially a governmental instrument that is to an extent vested with corporate powers to perform efficiently its governmental functions. As its role is that of an “instrument” of the government, the OWWA does not have a legislative charter to legally define the institution’s special functions and role with regards to welfare funds. This provided the OWWA with unclear standards and a limit of authority and its delegation. From research conducted by the Centre for Migrant Advocacy in August 2008 these few issues resulted in ineffective communication by the OWWA and misinformation of the institution’s role for Filipino workers. Issues of the degree of transparency and decision making in relation to funds by the OWWA also surfaced (The Centre for Migrant Advocacy 2008).

Although it was attached to the Department of Labour and Employment, until 2011 the OWWA’s role perception projects the identity of a trust fund more so than actively involved in the protection of migrant workers. This particular identity means that the integrated mechanism embedded within the OWWA is not utilised to focus on the policies, but on the management and distribution of the trust fund. Only the Board of Trustees of the OWWA is responsible for planning and implementation of policies, as well as the crafting of regulations surrounding the management and sources of funds (Aguinas and Ruiz 2007, 9-10). The day-to-day administration is managed by the Secretariat of the OWWA. The majority of the OWWA Secretariat’s staff is stationed in regional offices within the Philippines and abroad in major destination countries for Filipino workers. Welfare officers,<sup>53</sup> recommended by the OWWA, work abroad with labour attaches and ambassadors in assisting Filipino workers abroad. Despite the fact there was no evidence of tangible effort from the OWWA to pursue

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<sup>53</sup> Appointed by the President of the Philippines, nominated by the DOLE Secretary and recommended by the OWWA Administrator.

migrant workers as a regional idea, particularly through ASEAN. The schematics available within the OWWA are focused on identifying the issue in the Philippines as an independent country. Although appropriate mechanisms, structures and systems are in place with regards to the OWWA's functions, relevant schemes within the manner in which the institution distributes appropriate ideas of workers protection are maintained with a trust fund approach.

### **Discourses within the OWWA**

Discourses within the OWWA varied from the period where Welfund was in place starting from 1977. The focus in this enquiry will be limited to see whether discourses by the OWWA admit the notion of the OWWA's responsibility to protect, appropriate inclusion of a mechanism of protection, and the recognition of the importance of ASEAN to seek migrant workers protection. Also included is the investigation on whether discourses on migrant workers within the OWWA have shifted from the economic development point of view to include a more societal rights perspective. This can be seen in the official documents and releases published by the OWWA from the time when it functioned under the umbrella of Welfund, and throughout the institution's existence up to the year of 2009.

Within the Instructions No.537 of 1977 discourses that define the purposes of the OWWA have covered main protection mechanisms with regards to migrant workers well-being. "The main objectives and purposes of which (Workers Welfare Fund or Welfund) are: 1) to protect the interest and promote the welfare of Filipino overseas workers in recognition of their valuable contribution to the overall development effort; [...] 3) to provide social and welfare services to Filipino overseas workers, including insurance, social work assistance, legal assistance, cultural services, and remittance services; [...] 5) to undertake studies and research for the enhancement of their social, economic and cultural well-being; [...] 6) to

develop, support and finance specific projects for the welfare of Filipino overseas workers” (The Office of the President of the Republic of the Philippines 1977, : Rules and Regulations Implementing LoI 537, Point 3,5 and 6). The purposes of the Fund as described in this document clearly depict appropriate inclusion of the idea of workers protection of Filipino workers. A notion of the responsibility to protect is also equally present in this discourse; “to facilitate the implementation of the provisions of the Labour Code concerning the responsibility of the Government to promote the well-being of Filipino overseas workers” (The Office of the President of the Republic of the Philippines 1977, : Point 2). It appears clear that from discourses within this document the OWWA presents appropriate ideas to support protection of migrant workers. As was stated in the Omnibus Policies Section 4 under “Vision and Core Values”; “the OWWA is the lead membership welfare institution that serves the interest and welfare of member-Overseas Filipino Workers (OFW)” (The Department of Labor and Employment the Republic of the Philippines 2003, : Article II, Section 3).

Through the 1995 Overseas Filipino and Migrant Workers Act more strength was given to the mandate and services of the OWWA. Within section 15 of the Act, the OWWA is entrusted with the responsibility to manage repatriation and the funding of such repatriation; “in cases where the principal or recruitment agency cannot be identified, all costs attendant to repatriation shall be borne by the OWWA” (The Parliament of the Philippines 1995, : Section 15). Other contingency arrangements surrounding the welfare of migrant workers have also been attached to the OWWA. Section 17 of the 1995 act suggests the OWWA’s role within a Re-placement and Monitoring Centre for returning Filipino migrant workers and formulates a program to motivate migrant workers productivity. Section 21 organises a Migrant Workers Loan Guarantee including a Pre-Departure Loan and Family Assistance Loan for workers who are ready to leave and their families (The Parliament of the Philippines 1995, :Section 17

and 21). Within these mechanisms the appropriate discourse of migrant workers protection appears to be covered sufficiently by the institution. This suggests that there exist relevant supportive discourses within this institution on the idea of migrant workers protection.

Beyond supportive discourses, some discourse in OWWA remains to project the view of migrant workers as a resource for economic development. This is seen initially in the introduction of the Welfund Letter of Instructions of 1977 where the recognition of the need to “protect the interest and promote welfare of Filipino overseas workers” is tied to “their valuable contribution to the overall development effort” (The Parliament of the Philippines 1995, : Point 2). Within the OWWA Omnibus Policies of 2003 similar discourses are located. Within the Article II on the OWWA mandate it is stated that; “The creation of OWWA emanates from the Constitutional mandate for the State to affirm labour, local and overseas, as a primary social economic force” (The Department of Labor and Employment the Republic of the Philippines 2003, : Article II, Section 1). This definition shows the projection of migrant workers as a source of economic benefit once again.

Similar notions appear in the Republic Act 7111 and the offer to invest workers’ remittances through an Overseas Workers Investment Fund scheme. The intention to build institutional capital from workers’ remittances has been published as an effort to increase workers’ income and avoid it being spent before workers reach their home towns. The distribution of these funds into government owned and controlled investments, securities, and companies were based on the idea that it will “provide optimum earnings, liquidity and protection of the Fund” (The Department of Labor and Employment the Republic of the Philippines 2003, : Article IV, Section 3). Although the reasons are plausible, the limited options of investment possibility create a sense of commodification of workers. It shows that for the OWWA, its main functions the discourse of “the trust fund” plays a greater role than the discourse of workers protection.

The clauses within the OWWA Omnibus Policies in 2003 concentrated more on “organization and management” of the OWWA, which touches on the roles of memberships and membership mechanisms; “collection policy” which covers the legal basis for membership fees and contribution to the fund; “fund management and investment” and “fiscal and budget policy” (The Department of Labor and Employment the Republic of the Philippines 2003, : Article II, Section 3). Concerns on services for workers were discussed in one article, in comparison to four articles concerned with the management of the trust fund. This development either suggests that the Philippine workers migration has been so developed that it demands the inclusion of a trust fund to manage workers’ earnings or that the system simply concerns more with the economic benefit side of sending workers abroad than protection.

The insight paper provided by Aguinas and Ruiz identifies two categories of a welfare fund’s service as core services and secondary services. Core services focus on protecting migrant workers when they are abroad, which includes repatriation, health and life insurance and legal assistance. Secondary services revolve around providing help for migrant workers before and after their departure, including giving help for the families left behind. What this secondary service provides includes education, training, reintegration programs and loans (Aguinas and Ruiz 2007, 19). Although the trust fund function of the OWWA is essential for the management of workers’ remittances, it remains to be in the secondary services category, which risks core services to be neglected by the institution.

The examination of identities and discourses informs the research that there are tendencies of putting forward secondary services over core services in OWWA. This indicates yet again why the second level constraints made it difficult for an ASEAN level migrant workers protection policy to be formulated.

## **VI.2.4. Identities and Discourses within the Philippines Department of Labour and Employment (DOLE)**

### **Identities in the DOLE**

DOLE started in 1908 as a small bureau under the Department of Commerce and Police with a role of labour registration, labour market analysis and organisation of employment agencies. After 1933 the Bureau became a Department whose primary role was on “protection and promotion of local and overseas Filipino workers” (The Department of Labor and Employment the Republic of the Philippines 2009, : Chapter I). After the EDSA revolution in 1986 the Department was reorganised to become the Department of Labour and Employment (The Department of Labor and Employment the Republic of the Philippines 2009). Today DOLE plays the role of a government agency whose role is to “formulate policies, implement programs” and function as the “policy coordinating arm of the Executive Branch in the field of labour and employment” (The Department of Labor and Employment the Republic of the Philippines 2009, : Chapter I). This coordinating role is especially evident as the office of the secretary of the DOLE heads all the main institutions in the Philippines that deal with migrant workers issues, including the OWWA, POEA, Institute for Labour Studies (ILS), National Labour Relations Commission (NLRC), Occupational Safety and Health Centre (OHSC), Employees Compensation Commission (ECC), and the Philippine Overseas Labour Offices (POLO).

Other than this coordinating role, the Executive Order No. 126 of 1987 defines DOLE’s power and function. Important functions of which include important clauses on migrant workers welfare and protection such as;

“(b) Protect and promote the interest of every citizen desiring to work locally or overseas by securing for him the most equitable terms and conditions of employment, and by providing social and welfare services;



- (f) Provide for safe, decent, humane and improved working conditions and environment for all workers, particularly women and young workers;
- (g) Maintain harmonious, equitable and stable labour relations system that is supportive of the national economic policies and programs;
- (h) Uphold the right of workers and employers to organize and to promote free collective bargaining as the foundation of the labour relations system; “ (The President of the Philippines 1987, : Section 5, Article (b), (f), (g) and (h)).

From the vision and mission of DOLE today a more managerial identity than welfare protection is portrayed within the role perception. DOLE's role perception involves ensuring that “every Filipino worker attains full, decent and productive employment,” and “to promote gainful employment opportunities, develop human resources, protect workers and promote their welfare, and maintain industrial peace” (The Department of Labor and Employment the Republic of the Philippines 2009, : Vision and Mission Statement). From these statements the focus of role identification is centred on providing good and beneficial employment for the overall Filipino workforce.

This role is further defined in the goals and strategies of DOLE's Citizen Charter. The strategic goals include 1) a gainfully employed workforce, 2) a globally competitive workforce, 3) a secure workforce, and 4) a safe and healthy workforce. To achieve the first strategic goal, the DOLE's strategies revolve around enhancing employment opportunities locally and overseas and preventing job losses. Similar trends apply for the second, third and fourth strategies where the concentration is to ensure the widest and fairest possible conditions of employment are available for Filipino workers and ensure that the workers are trained. Concerns on welfare of workers was identified within the framework of the working relationship instead of social rights; “promoting safety and health at work through the delivery of work accident and illness prevention, work compensation and rehabilitation services” (The Department of Labor and Employment the Republic of the Philippines 2009). This suggests either that DOLE identities do not embrace appropriate support for the idea of

migrant workers protection or that being the coordinating institution has rendered DOLE role perception to be generalised, leaving the welfare protection role to subsidiary institutions such as the OWWA.

Although the details of the protection mechanism are established by specialised institutions such as the POEA and OWWA, DOLE remains to determine the focuses of the activity of these institutions through its coordinating efforts. In its Citizens Charter DOLE defines their services as including seven major programs of which welfare services especially for Filipino migrant workers are assigned to the POEA and OWWA (The Department of Labor and Employment the Republic of the Philippines 2009, : Chapter 3).<sup>54</sup> The POEA and OWWA in their practices remain to be semi-autonomous from DOLE and involved in coordination with the DFA under the “country team approach.”

For concerns of repatriation DOLE and OWWA has funds reserved whilst POLO (The Philippines Overseas Labour Office) arrange for temporary camps and accommodation when needed abroad (The Department of Labor and Employment the Republic of the Philippines 2010). DOLE is also actively involved as a member of the Inter Agency Council against Trafficking in Persons which seeks to prevent and prosecute traffickers and rescue and rehabilitate victims (The Department of Labor and Employment the Republic of the Philippines 2010). Particularly in the Middle East, the three agencies and personnel of POLO devise a “mobile service team” which visits camps, dormitories and work places to

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<sup>54</sup> The seven main services the DOLE offers include 1) Job search assistance services for wage employment, which involves placement of job seekers through employment exchange facilities; 2) Capacity-building services for livelihood, which entails assistance for workers who engage in self-employment and entrepreneurial undertakings; 3) Social partnership promotion and dispute resolution services; 4) Professional regulation services, technical-vocational education, skills competency and productivity trainings; 5) Services to safeguard fair and just terms and conditions of employment, including ensuring both domestic and international agencies and businesses comply with ethical recruitment and general labour standards; 6) Social protection and welfare services, includes protecting workers who are not usually covered by the social protection schemes of the government; and 7) Work accidents/illnesses prevention and work compensation and rehabilitation services. From these services the protection and welfare services for migrant workers are handled by the POEA and OWWA.

disseminate information, take up complaints and extend consular services (Valalba 2002, 33-35). This suggests that not only does DOLE's identities support the idea of migrant workers protection, the institution is equally willing to push forward an extensive action to reach workers who are abroad with the help of relevant institutions.

In the international and regional scope the development of supportive identities towards migrant workers protection by DOLE has shown a more progressive movement. Different to Indonesia, the Philippines has signed and ratified the UN Convention on the Protection of the Rights of all Migrant Workers and their Families in 1995, where DOLE played a major part in the campaign. This also includes support towards the formulation of ASEAN level protection policy on migrant workers protection alongside the Indonesian government. DOLE also supported the UN Convention on Decent Work for Domestic Workers of 2011 and the International Labour Conference in June 2011 (Migrant Forum Asia 2011). These few notions suggest that DOLE's role perception identifies the international and regional level as an important space to seek protection for Filipino workers. The Filipino government has also signed and ratified various relevant conventions to the effort of protecting migrant workers welfare including the Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention against Transnational Organized Crime and the supplementary protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Sayres 2004, 12). From the perspective of workers welfare, the Philippines have ratified all 7 fundamental ILO conventions which includes;

- No. 87 Freedom of Association and Protection of the Right to Organize Convention, 1948
- No. 98 Right to Organize and Collective Bargaining Convention, 1949
- No. 100 Equal Remuneration Convention, 1951
- No. 105 Abolition of Forced Labour Convention, 1957

- No. 111 Discrimination (Employment and Occupation) Convention, 1958
- No. 138 Minimum Age Convention, 1973
- No. 182 Worst Forms of Child Labour Convention, 1999 (Sayres 2004, 12).

The ratification not only portrays the government's commitment to required aspects within the management of workers welfare, but also further implies that the institution's identities are supportive towards the establishment of an ASEAN level migrant workers protection policy.

Despite supportive identities towards a regional level protection policy, some recent developments showed that DOLE lacks the societal side of their approach. This can be seen in the case of the state report to the UN International Convention on the Protection of the Rights of All Migrant Workers and their Families of 1990. As a signatory member of the Convention the Filipino government needs to produce a state report on their compliance to the Convention. The report that was due in 2004 was only submitted by the Filipinos in 2008 without consultation from the migrant sectors. This forced migrant rights groups within the Philippines and their networks abroad to submit an alternate report to the UN Committee (CARAM Asia 2011, 43). This action did not fill the requirements of the UN Committee which demands that consultations with migrant sectors are held in socialising the convention and the preparation of the report. Reviews of this report recorded Filipino government's insufficient implementation of the Convention and collaboration with non-governmental groups on issues concerning migrant workers (CARAM Asia 2011, 43-44). This suggests that either DOLE has not institutionalised its supportive ideas, or the Filipino government has yet to fully adopt all international standards and include societal institutions in migrant workers protection.

## **Discourses in the DOLE**

Discourses in DOLE include indication of whose responsibility it is to protect Filipino workers abroad, how these migrant workers are perceived and whether or not the protection of these workers represent the main priorities of government manpower policy. This section focuses on important notions that are related directly to the idea of workers protection in the “core” functions of protection workers abroad. As DOLE carries the general coordinating role of institutions such as the OWWA and POEA it is observed that the amount of official documents that DOLE releases are not as extensive and specific as its subsidiary institutions. Most of the statement and document releases are focused on providing the guidelines and standards instead of the actual management of workers in the field. The major document that provides DOLE with the positioning of its discourses is the Labour Code of 1974 and its added amendments followed by the 1995 Migrant Workers and Overseas Filipino Act. Some public releases have also contributed to DOLE’s discourse.

The role of DOLE according to the 1995 Migrant Workers and Overseas Filipino Act of 1995 suggest whose responsibility it is to protect Filipino workers abroad;

“The Department of Labour and Employment shall see to it that labour and social welfare laws in the foreign countries are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos including the grant of legal assistance and the referral to proper medical centres or hospitals” (The Parliament of the Philippines 1995, : Section 23, Article (b)).

This definition attached the responsibility to ensure workers protection to DOLE. As with the section on identities the vision and mission statements of the institution provide an indication of the DOLE’s reading of its role and position. As seen before, the Vision of DOLE does not portray a direct link with the protection of workers welfare (The Department of Labor and Employment the Republic of the Philippines 2009). This suggests an emphasis

on the “employment” side of the equation, neglecting the welfare protection notion. The mission statement on the other hand portrays some aspects of workers protection within the promotion of “gainful employment opportunities, develop human resources, protect workers and promote their welfare and maintain industrial peace” (The Department of Labor and Employment the Republic of the Philippines 2009, : Vision and Mission, Official Website). Again, as I pointed out in the case of Indonesia, the same dichotomy remains; balancing the focus from managing workers foreign employment to ensuring welfare protection for their workers.

Other discourses within the DOLE portray an approach that regards workers welfare and its protection to be provided with relations to their position as an important source of employment and foreign currency flow to the country’s economy. What is particularly interesting for this discourse is how DOLE sees the attainment of its strategic goals as “the Department’s contribution to the national goal of reducing poverty” (The Department of Labor and Employment the Republic of the Philippines 2009, : Section II). This means that DOLE remains to hold on to the discourse of migrant workers as a tool to diminish poverty in the Philippines. This is evident despite its discourse of “secure workforce” and “a safe and healthy workforce,” which entails the need to establish accords that there are “fair and humane terms and conditions of work and social protection” and “that workers enjoy a safe and healthy working environment” (The Department of Labor and Employment the Republic of the Philippines 2009, : Section II).

The DOLE Executive Summary of 2005 clarified the inclination towards the employment and economic benefit management instead of welfare protection; “full, decent and productive employment” are made under the intention of “supporting the national development plan” (The Department of Labor and Employment the Republic of the Philippines 2005, : Section 2). DOLE’s description on its contribution reads that “in the

attainment of the national employment goals” whereby the strategies the DOLE seeks to adopt remains to revolve around ensuring employment; “(for the aforementioned goals)...it (DOLE) adopts the following strategies; 1) Support for employment generation, 2) employment facilitation, 3) employment enhancement, and 4) employment preservation” (The Department of Labor and Employment the Republic of the Philippines 2005, : Introduction). Filipino workers’ migration in this case feeds into the achievement of these particular national goals. This suggests that the discourse of workers protection remains to take a secondary position in comparison to the focus on enhancing employment for Filipino workforce. Similar to the DMT of Indonesia DOLE’s discourse suggests a focus on providing workers protection solely as a supplementary condition in particular conditions of employment and only to be utilised when proper conditions of employment have been disrupted and workers violated. This consequently makes workers protection not a policy priority for DOLE.

Another discourse found present within the statements of DOLE is that which refers to migrant workers generally as a part of the wider “workforce” without a specific terminology to define the condition of those workers who are migrants. Based on this and research on the institution’s public statements there are no indications of the DOLE publishing the discourse of “migrant workers as heroes” as much as other institutions that have been previously included in this sub chapter. Similarly there is also no discourse released by the DOLE which particularly refers to Filipino workers as any degree of “Filipino nationals that the government needs to protect.” This means that the DOLE may not be sufficiently equipped with all the discourses to appropriately cover every dimension of workers migration that needs protecting. It also suggests that the Filipino government’s idea of migrant workers protection tends to take a reactionary approach more than a proactive route.

Identities and discourses seen in DOLE show the domination of ideas that support perception of migrant workers protection as employment protection instead of social protection. This reveals again inappropriate ideas of migrant workers protection and indicates yet again why it has been difficult for ASEAN level migrant workers protection policy to be established.

### **VI.3. Identities and Discourses in Societal Institutions in the Philippines**

Similar to the discussion on the Indonesian case, this section seeks to examine the identities and discourses embedded within societal institutions that may have been able to affect the manner in which ideas of migrant workers protection imbued decision makers' ideas. This is particularly important for the case of the Philippines as historically the country's governance has been strongly influenced by its networks of societal institutions. Even during Marcos' authoritarian rule, the role of NGOs and other social institutions remained to flourish under the umbrella of the church. As a consequence, the church provided a venue in which societal values can still develop despite strict authoritarian control from the government. This particular development occurred previous to when the societal institutions of Indonesia began to grow post Suharto. Despite this fact, indications tell that similar problems of under-participation and coordination remain. These are one of the concerns of the International Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in response to the state party report of the Philippines in 2009 (The United Nations International Committee on the Protection of the Rights of All Migrant Workers and the Members of their Families 2009).

The main institutions discussed in this section consist of specific groups of institutions. This section will investigate the identities and discourses of Migrante and Centre for Migrant



Advocacy (CMA) as societal institutions that are dealing with matters of migration and migrant workers; PhilRights as an NGO dealing with the human rights side of workers migration; the Institute of Popular Democracy (IPD) which observes the social welfare side of the issue, Academic Researchers at the University of the Philippines and NCCP as the Church Organisation, which provided the umbrella under which societal institutions in the Philippines developed. These few institutions are chosen as they are central to government consultation on matters of workers protection and have been outspoken to criticise the Filipino government on issues of migrant workers. A note on the role and position of the ILO will also be added.

The identities section tries to see how societal institutions perceive their role in the protection of migrant workers, in particular with regards to the government and ASEAN. The discourses section focuses on investigating who societal institutions see should be responsible to protect migrant workers, and whether there are other published discourses available.

### **VI. 3.1. Identities of Societal Institutions**

Different to the case of Indonesia, the international level civil society organisations do not play a large role in distributing ideas of workers protection to decision makers in the Philippines. The main distribution institution in the Philippines for such ideas are the vast growing strong Filipino civil society organisations whose international networks and branches spread wherever Filipino workers work in the world. Field work informs me that similar role perception with regards to a general support towards a better migrant workers protection mechanism can be found within societal institutions in the Philippines. Another characteristic that is determinant in the case of Filipino societal institutions are the vast amount of international support and widely spread network.

Civil society organisations that are concentrating on dealing with migrant workers such as Migrante and the Centre for Migrant Advocacy (CMA) are some of the biggest, most vocal civil society organisation whose role perceptions are tightly defined as supportive to the idea of migrant workers protection. Both institutions are involved in migrant workers advocacy with the CMA aiming to “improve the economic, social and political conditions of migrant Filipino families everywhere” (The Center for Migrant Advocacy 2003, : Vision and Mission, Official Website), and Migrante focused on promoting “migrant rights and dignity against all forms of discrimination, exploitation and abuse in the work place and in the community and resist all anti-migrant policies” (Migrante Philippines 2012, : Objectives, Official Website). From these definitions, both are actively involved in providing direct assistance to distressed workers, deal with research, education, networking and lobbying for the cause of workers welfare to the government. Aside from engaging the government, Migrante is involved with the IMA (International Migrants Alliance) and also works with the Philippines Church on campaigns for migrant workers rights issues. The CMA cooperates with other NGOs in Southeast Asia to conduct engagements with the Philippines government through the POEA as a part of the ASEAN Committee for Migrant Workers Protection (Sana 2011, : Interview). CMA especially has also been actively pushing towards a better ratification rate of the ILO Convention on Protection of Migrant Workers and their Families and other conventions on workers rights in countries of Southeast Asia through ASEAN (Centre for Migrant Advocacy, Friedrich Ebert Stiftung, and Migrant Forum Asia 2007). Although most vocal societal institutions in Indonesia and the Philippines participate in the Task Force on ASEAN Migrant Workers, a more active role is taken by their Filipino counterparts. This can be seen from the active engagement with the POEA and Philippines representative for the migrant workers committee in ASEAN (Centre for Migrant Advocacy, Friedrich Ebert Stiftung, and Migrant Forum Asia 2007, : Interview; Sana 2011). This means that not only their role

perception is supportive to the idea of migrant workers protection, but equally that the level of ASEAN is perceived as an important level to achieve protection. Although this active involvement role of the civil society to the decision making framework is something that is equally embraced by the government, the strength of their vast international branches helped societal institutions' lobbies.

Similar role perception is also shown by PhilRights that takes a more human rights approach to the issue. Philrights along with the CMA also worked together with the DOLE and POEA to incorporate human rights aspects within the PDOS (Pre Departure Orientation Seminar) for Filipino workers before leaving the country. They have also participated in the alternative report to the ILO Committee for Migrant Workers with other migrant workers NGOs (Pimentel-Simbulan 2011, : Interview).<sup>55</sup> According to Nymia Simbulan of PhilRights the issues surrounding migrant workers conditions in Southeast Asia is largely of human rights nature, of which decisive actions so far have been delivered by civil societies and not necessarily the state government (Pimentel-Simbulan 2011). Similar role perception has also been agreed by Migrante, CMA and IPD. Especially for Migrante, their international branches work as a pressure group to push the DFA through their embassies abroad while also pushing lobbies nationally (Pongos 2011, : Interview). Although societal institutions identify their role as the guardian for migrant workers rights the way these institutions identify the role of governmental institutions, and ASEAN as another regulatory institution at the regional level differ. It is important that societal institutions view their governmental and regional counterparts to be supporting the same identities as the adoption of a welcoming identity allows these institutions to entrust the issue of migrant workers protection to their own government and ASEAN instead of other available institutions or themselves. Through

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<sup>55</sup> As a state party to the ILO Convention on the Protection of the Rights of All Migrant Workers and their Families, the Philippines is required to submit a report on the implementation of the Convention. In 2008 the Philippines state report was submitted and declined by the Committee of Migrant Workers Protection. NGOs are able to then submit an alternative report in 2009.

this sufficient room for societal ideas to permeate into the government mechanism is also feasible.

Simbulan pointed out that although the ASEAN Ministers have established AICHR (ASEAN Intergovernmental Commission on Human Rights) it remains to be of an intergovernmental level of cooperation (Pimentel-Simbulan 2011, : Interview). This indicates that the permeability for appropriate ideas at the ASEAN level depends on selective policies within individual states. This particular priority of state over societal issues in ASEAN is similarly obtained by academic researchers in the area. Similar views are added by Jorge Tigno of the University of the Philippines who suggests that within ASEAN the priority for protecting migrant workers in the region is still defeated by members' needs to advance economic development (Tigno 2011 : Interview). Tigno notes that when it comes to interaction in ASEAN, member states function in "ASEAN is only as strong as the sum of its parts" rationale, putting their national interests first. In this case the issue of migrant workers is the concern of both Indonesia and the Philippines government, not the rest of the ASEAN members (Tigno 2011 : Interview). Although similar notions were recognised by Ellene Sana of CMA she states that the government of the Philippines could frame the issue differently in front of ASEAN by pointing out that, essentially, as migrant workers benefited the receiving countries' economy too, they are the concern of all members (Sana 2011, : Interview). According to Jorge Tigno such initiatives are difficult for the government of the Philippines to pursue first or pursue alone. Tigno points out that compared to other ASEAN members, differing identities<sup>56</sup> and struggling economy rendered the Philippines unconfident in taking the first policy initiatives (Tigno 2011 : Interview). Before other members initiate so that the Philippines can follow it is unlikely that the Philippines will push firstly. This suggests

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<sup>56</sup> Compared to other signatories of the Bangkok declaration for ASEAN the Philippines is the missing similar pre-colonial history and a Malayan background.

considerable doubt from the societal institutions, not only on the mechanism of ASEAN, but also in the positioning of the Philippines as its member.

Maria Ela Atienza from the Third World Studies Centre suggests that societal institutions had to deal with government institutions differing role perceptions. Atienza remarks how the DFA, despite diplomatic efforts, has maintained their “orientation on diplomacy and foreign affairs” (Atienza 2011, : Interview), adopting an identity of a diplomat rather than the guardians of their nationals’ rights abroad (Atienza 2011, : Interview). Although she also notes of the persistent problem of lack of personnel in the DFA and DOLE, the main issue is at the lack of identification to the suffering of workers and therefore little orientation on protection of workers (Atienza 2011, : Interview). Similar views were added by Jorge Tigno who suggests the Philippines itself had little focus on migrant workers protection until the 1990s, particularly after the case of Flor Contemplacion (Tigno 2011 : Interview). Added by the view that a reactive bilateral agreement suits the Philippines, regional level policies are made further aside.

### **VI. 3. 2. Discourse of Societal Institutions**

As discussed in the identities section earlier, societal institutions are united in their role perceptions and their position relating to the government and ASEAN’s identities. Despite their similar role perceptions some differences in their discourses are found. This, to a certain extent feeds into what Atienza perceives to depict the doubt over civil society’s ability to make changes or impacts to the making of protection policy due to their factionalised positions. Different societal institutions brought different discourses on how the issue of migrant workers and its protection should be handled and who should be responsible for it. These differences of discourses can dampen the strength of the overall campaign for workers

protection by Filipino societal institutions at many different levels, and disorientate focus of policy making for the government.

Discourses around whose responsibility it is to provide protection revolve around two concentrations. The first discourse assumes the responsibility to protect migrant workers as a part of the workers responsibility themselves. Prof. Bernard Karganilla of the Department of Social Science, University of the Philippines Manila explored this particular discourse. According to the social commentaries of Karganilla, workers migration in the Philippines has always been a cultural part of the Filipino life. As only those who are prepared would go abroad to work, their protection should be the responsibility of themselves (Karganilla 2011, : Karganilla). Migrant workers are responsible to ensure sufficient support networks are there to aide them in cases of trouble. This discourse also includes the responsibility of workers recruitment and sending agents under what was known as “help the migrant workers help themselves,” a discourse supported by NCCP and the civil society organisations under it (Mission for Filipino Migrant Workers (MFMW) 2001) The discourse resonates other discourses surrounding “empowerment” of workers, noted by Atienza as the focus of some civil society groups such as Kalayaan and the Commission for Filipino Migrant Workers (Atienza 2011, : Interview).

The second concentration this discourse centred on is the responsibility of the government to protect migrant workers. This represents the view of the rest of the societal institutions mentioned, including PhilRights and the CMA. In this case differing discourses can be especially damaging, as the first discourse can suggest taking the government away from the responsibility to regulate workers protection abroad.

Another differing discourse between societal institutions revolves around the best ways in which to tackle the issue of migrant workers welfare abroad. The Institute for Popular

Democracy carries the discourse that the issue of neglected workers welfare should be handled through a system of social protection of employment domestically (Cardenas 2011, : Interview). By establishing a national employment guarantee less Filipino workforce would have to go abroad for employment to fall victim of mistreatment abroad. Migrante, on the other hand, believes in the pressure of their branches abroad to exercise societal control on Filipino embassies and the government's approach for protection in general. Similar to the CMA, Migrante also relied on their international network in providing pressure both internationally and domestically. Where societal institutions differ here also involve whether regional level agreements within ASEAN are important to be sought with comparison to bilateral agreements. Societal institutions such as PhilRights and the CMA still sees the importance of ASEAN to an extent it can increase the government's profile, while Atienza and Migrante noted the efficiency of bilateral agreements. They deem that bilateral agreements have been effective and quick in providing results in terms of crisis, although it suggests that governments are more reactionary (Pongos 2011, : Interview). This suggests discourses that stress the low level of confidence in societal institutions and differing focus on how protection should be tackled.

Another set of discourses surrounds how societal institutions deem the government should frame their discourses. Nymia Simbulan remarks that the Filipino government tend to hold on to the discourse of "gratefulness" when positioning themselves to receiving countries (Pimentel-Simbulan 2011, : Interview). This discourse suggests that Filipinos should be "grateful" for the employment and further suggests that demanding a mutual protection for Filipino workers in these countries should not be seen as a priority for the government's conduct of foreign policy. This discourse also shows the level of good will the government has in the pursuit of their workers welfare abroad, important for bargaining position at the international level. Particularly, at the level of ASEAN pressure for better protection is

dampened further by the Philippines' inferiority perception. The discourse that the government should have published, especially at the level of ASEAN should involve more of a "mutual responsibility to protect" for both sending and receiving countries (Sana 2011, : Interview; Migrante Philippines 2009). This discourse stresses more on how migrant workers not only provide economic benefit to the Philippines as a sending country but also receiving country. In contrast to the previous discourse, this discourse shows a greater will to fight for workers protection which is promising for the Philippines bargaining position.

Societal institutions also criticise the amount of discourses released by the Filipino government that in reality are not followed, particularly regulations. Within the Migrant Workers and Overseas Filipino Act of 1995 it was stated that:

"The State shall deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognises any of the following as guarantee on the part of the receiving country for the protection and the rights of overseas Filipino workers" (The Parliament of the Philippines 1995, Chapter I, Section 4).

In reality there are still workers sent to and receiving mistreatments in Saudi Arabia. According to the above discourse Saudi Arabia should not be a country to where Filipino workers should be sent. Saudi Arabia has not signed the 1990 UN Convention on the Protection of the Rights of Migrant Workers and Members of Their Families and has been subject to international human rights critiques such as Amnesty International over their standard of trials which do not comply with internationally recognised standards, lack of women rights appreciation and indications of tortures (The Amnesty International 2012). This makes Saudi Arabia unfit to receive Filipino workers, yet until now increasing numbers of Filipino workers remain to be sent to the country while at the same time more human rights violations cases occur (Migrante Philippines 2009). Here the government of the Philippines denied its own discourses, suggesting that again the priority of the government has not completely focused on ensuring that its nationals are safe from harm in their endeavours.



The identities and discourses of societal institutions in the Philippines show more appropriate ideas to migrant workers protection. Nevertheless the differences of discourses and ways to handle workers protection represent yet again another hurdle in consolidating ideas on migrant workers protection. This issue demonstrates once more why it has been difficult for the Philippines to provide sufficient support for the creation of an ASEAN level migrant workers protection policy.

#### **VI.4 Conclusion**

Workers migration from the Philippines has also been influenced by the policies of their colonial governments, similar to the case in Indonesia. With a long history of people who work and travel to seek jobs abroad, the Filipino government has to take into account the millions of Filipinos who are out of the country in their social policies. The country's policies have embraced workers migration as a permanent employment option, and less of a developmental strategy as it was thought initially.

Issues within the identities and discourses of governmental institutions in the Philippines can be summarised hereafter. **One**, despite being equipped with some identities to support protection of workers the responses of the institutions remains reactionary. Although policies have been formulated to better protect workers, a more proactive approach rarely takes focus before cases of violence against workers become a diplomatic crisis. **Two**, the idea of workers protection is tightly connected to the view of migrant workers as an economic solution. **Three**, migrant workers are seen to be going for overseas employment of their own choice, and therefore their welfare is their own responsibility. The responsibility of the government in this case is solely on empowering workers with relevant information on their employment destinations. **Four**, the view of receiving countries is one of gratefulness

for providing Filipino workers with employment. This pushes the government away from demanding a workers protection mechanism to receiving countries. **Five**, despite the growing protection mechanism released by the government, there is still a discourse of “commodification” in the dealing of workers, and **Six**, at the regional level of ASEAN the Philippines are unconfident to push forward a protection mechanism independently, making regional protection policy depend on another initiative.

Societal institutions identities in the Philippines share similar ideas of support towards migrant workers protection. At the same time they share similar ideas on how ASEAN and the Philippines government need to perceive their roles. The difference in the Philippines lies in the size and the strength of the societal institutions, which allows them to not only pressure the government but also take actions on their own. The similarity with the case of Indonesia is that societal institutions still have differing identities and discourses. When these differences contradict each other the pressure towards better migrant workers protection lose its strength, and its substances. This is why ensuring a stable and coherent discourse in different pressure levels, in this case societal institutions, is important to build a steady consensus in the face of governmental and international institutions. Both in the case of the Philippines and Indonesia this particular consensus is still lacking in formation, despite the increasing importance of their societal institutions.

Identities and discourses in both the previous case of Indonesia and the Philippines in this section illustrate the roots of the two countries’ insufficient support towards the formulation of an ASEAN policy for the protection of migrant workers. Although in the case of the Philippines there have been more appropriate ideas developed on migrant workers protection, particularly in governmental institutions, there remains to be a lack of appropriate measures to regulate protection itself. Similarly the societal institutions have also not consolidated their effort sufficiently to increase the strength of their support. This lack of

consolidation and sufficient measures presented decision makers with no definitive course of action which can lead leaders to a dilemmatic position in the international bargaining table and the agreement to stall. This yet again simulates why trends within the normative structure in the Philippines are putting pressure and constraints to the formulation of a regional level policy for the protection of migrant workers in ASEAN.

## **CHAPTER VII**

### **CONCLUSION**

The research conducted in this thesis demanded a policy analysis framework that is able to facilitate the answer to why ASEAN as a regional institution has not been able to institutionalise a coherent regional policy framework for the protection of migrant workers. To answer this question the thesis took into account existing studies on foreign policy analysis as well as explanations from basic International Relations theory. The thesis also considered the importance of appropriate ideational structures within individual members in coming up with a regional policy framework for the protection of migrant workers, particularly major workers sending countries of the region. The research puzzle in this thesis therefore focused on providing a solid policy analysis that would be able to explain why major sending countries of ASEAN have not been able to institutionalise a working coherent migrant workers policy in the regional association. This thesis has answered the question by investigating the manner in which relevant ASEAN members, Indonesia and the Philippines, institutionalise migrant workers protection within their own domestic and regional policies. This thesis examined the making of migrant workers protection policy in ASEAN, particularly within Indonesia and the Philippines. The thesis has investigated the case by way of examining institutionalisation processes of ideas supportive to migrant workers rights in both relevant regional and state level institutions in Southeast Asia.

This conclusion chapter compiles and reviews the findings of the research and concludes the analysis in previous chapters. In this chapter, I touch upon the main findings of

the thesis in two parts. The first part includes the summary of analyses on institutionalisation of migrant workers protection, while the second part discusses further implications of this research for policy-makers, political researchers and world politics in general. Potential future researches into regional level policy making will also be identified and considered with relation to its inference for future studies on foreign policy analysis and the study of institutional dynamics in general.

### **VII.1. Summary of Conceptual Frameworks**

The policy analysis developed in this thesis utilised a modified version of two level games approach that also takes advantage of the development of sociological institutionalism in trying to provide answers to the research question. As previously elaborated and compared in Chapter II and further in Chapter III, the two level games approach provided the research question in this thesis with the satisfactory tool of analysis that allows sufficient consideration of the interaction between policy processes in ASEAN and within Indonesia and the Philippines. Two level games offered this research a versatile and useful approach to methodologically analyse the case at hand. This approach informed the thesis that the making of foreign policy involves constant interactions and bargaining between actors at the international and domestic level. At the international level, countries negotiate and bargain to agree on a specific agreement that country leaders will then have to negotiate further with actors at the domestic level to be ratified. Depending on the domestic response, leaders may then be forced to renegotiate and come up with a more satisfactory agreement for both actors at the international and domestic level. These renegotiations may need to be done continuously and back and forth at the two levels, particularly as preferences vary and can sometimes be contradictory between the two levels.

From the framework of two level games the research is made aware of the constraints that both domestic and international actors impose on each others' decision making outcomes. These constraints present considerable dilemmas for decision makers that in turn affect the process of the negotiation, delay or halt the process altogether. The thesis postulates that such a predicament was what occurred within the policy making process towards an ASEAN policy framework for migrant workers protection. In this case, to answer the question of "why" the research needed further investigation into what constitutes these "constraints." As the discussion in Chapter II suggested, this enquiry on "constraints" became the entry point for sociological institutionalism, which, used as an auxiliary framework, have proved to be indispensable for the thesis.

Sociological institutionalism in this thesis helped offer a tool to examine the constitution of constraints by unravelling normative structures within countries' decision making institutions. The dynamics of these structures are what subsequently determine the substance and strength of governments' foreign policy constraints. As further elaborated in Chapter III, while two level games redefined the importance of domestic-international interactions in international agreements, sociological institutionalism complemented the approach by exploring the substance of these interactions as well as the manner in which they influence policy makers. Sociological institutionalism informed the analysis that in order to unravel these influences and answer the research question the investigation into domestic-international interactions needs to focus on the identities and discourses of institutions at both the domestic and international level. From this modification the thesis arrived at a revelation that institutions at the domestic and international level have differing and sometimes conflicting identities and discourses with regards to establishing a working protection policy for migrant workers at the regional level. This in turn confirmed the assumption that consolidation towards appropriate ideas of migrant workers protection at the regional level

had not been achieved because these particular ideas had not been institutionalised sufficiently within the domestic institutions of relevant members. By conducting this particular modification the thesis presented an analytical framework of policy that is not only satisfactory for the research in this thesis, but also for the development of frameworks and approaches on foreign policy analysis in general.

## **VII.2. Summary of Main Findings**

### **VII.2.1. Institutionalisation at the Regional Level: ASEAN, Malaysia and the ILO**

The thesis reconfirmed that ASEAN as an institution is dominated by identities that are more supportive to other ideas than those essential for the protection of migrant workers in the region. As I elaborated in the first empirical chapter, Chapter IV, ASEAN's identities do not appropriately support the protection of migrant workers, and it can be seen from few major aspects. Firstly, from the start of its history ASEAN was established to support two main identities; a regional security institution which ensures regional stability, and a regional venue of cooperation support economic development of its members. Secondly, the institution put more power in its Economic Ministers Meetings than other labour or social ministerial forums. Thirdly, in the ASEAN Communities, issues of migrating workers have been identified as a part of ASEAN Security Community and ASEAN Economic Community, which suggested the potential use of inappropriate mechanism to tackle issues of a more "social" nature. It was only in 2007 that ASEAN declared to aim for a regulative mechanism to protect migrant workers in the region after constant pressure from societal institutions. In addition, discourses within ASEAN have only started to be relevant after the establishment of ASEAN Vision 2020 in 1997. Before this period the pressures of the Cold

War and economic crisis made the association's discourses inevitably focus on maintaining regional stability.

From the Malaysian perspective it was clear that identities and discourses in its national level do not support institutionalisation of ideas supportive to migrant workers protection. What became prominent from the viewpoint of Malaysia was that a migrant worker who has no documentation or no longer attached to their employer poses a "threat" to their national security. By upholding this perception migrant workers are dealt with by state security instruments, ignoring the humanistic societal dimensions of migrant workers. Malaysian immigration laws and mechanisms equally depict discriminatory identity with regards to migrants, clearly showing that the government does not assume a role as a migrant workers protector. When this discourse was elevated to the regional level, it resonates with ASEAN's own discourse of consensus and non-interference, rendering other discourses secondary, including that of social protection.

The ILO, on the other hand showed that its identities and discourses promote the institutionalisation of ideas that supports migrant workers protection particularly to governments and ASEAN as regional institution of governments. Despite this fact, ASEAN's discourses have dampened the organisation's effort to institutionalise workers protection ideas among its members. ASEAN's consensus and non-interference discourse provide members with leeway they could use to protect their sensitive issues from being regulated internationally, which occurred in the case of Malaysia and how they perceive migrant workers as sensitive matters of national security. By advocating social issues such as the rights migrant workers as a matter of national security, members avoid regional regulation and ILO's standardisation.



### **VII.2.2. Institutionalisation at the Domestic Level: Indonesia and the Philippines**

Some similarities can be drawn from the perspectives of major workers sending countries in Southeast Asia, Indonesia and the Philippines. Like some migration modes in the world, migration in Southeast Asia emerged from expansions of trade and movements of labour induced by colonial presence. The migratory movement of workers from both Indonesia and the Philippines were first initiated by the colonial government in power. Both countries governmental institutions lack, to a certain extent, the social orientation when looking at the issue of migrant workers. Problems of “commodification”, defined in this thesis as the treatment of labour as a commodity, appeared in both countries, in addition to lack of coordination, consolidation and engagement between their societal and governmental institutions. These particular inferences conclude the findings from Chapter V and Chapter VI.

Indonesia’s first migration of workers was initiated by the Western rulers, in this case, the Dutch colonial administration and the British protectorate. The Dutch administration brought Indonesian workers to Surinam and to an expanding network of workers migration of Europe and North America, which required large amount of workers after the Anti-Slavery Act was imposed. Post-colonial Indonesia saw workers policies constantly changing from one government to another. The period directly after the independence saw a lively labour politic that brought workers welfare regulations in place. During the rule of Suharto, workers migration was set as a policy intended to boost economic development, thus, portraying migrant workers as the country’s economic resources. From the investigation of identities and discourses in Indonesia several causes were able to be drawn as to why institutionalisation processes did not support migrant workers rights in the governmental and societal institutions. These causes include under-coordination between institutions, worsened by

differing view of how best to tackle migrant workers rights; existent view of migrant workers as an economic resources or commodification and the lack of consolidation between institutions.

On paper, Indonesian governmental institutions presented claims that they promote and push forwards for migrant workers protection in any level, regional and international. These governmental institutions are mostly equipped to tackle workers protection issues and recognise the responsibility of the government to regulate workers protection. When further investigated, these claims were evidently accompanied with a set of failures in institutionalisation as seen from their identities and discourses. Indonesian DFA, for example, suffers from an unclear line of authority between relevant government institutions, corruption and consular exclusivity renders little policy progress to surface on the protection of migrant workers. In the DFA, individual efforts instead of coordinated policies are what drive migrant workers protection at the moment. The Indonesian Department of Manpower and Transmigration (DMT) on the other hand, maintained that its identities are focused more in widening employment opportunities and ensuring that Indonesian workforce are sufficiently trained. Their discourses depicted a “commodification” of workers and a limited perception of migrant workers protection, viewing it as merely tied to the activity of employment and placement. The Indonesian BNP2TKI is responsible for placement and protection of migrant workers, although their identities and discourses say different. Role perception by the BNP2TKI was revealed to be focused more on placement than protection, whilst its discourses showed a misperception of migrant workers needs. Coupled with BNP2TKI and DMT’s overlapping authority, an unclear limit of jurisdictions and budget fights these facts render the two institutions ineffective in conducting their responsibility. As the discussion in Chapter VI suggested, these vital errors do not appear to occur in the case of governmental institutions in the Philippines.

The Indonesian societal institutions are similarly supportive for the idea of migrant workers protection policy as societal institutions in the Philippines, despite experiencing a late development. Despite this, some differences had surfaced on whether to approach migrant workers protection at the regional, national or international level and the types of social protection given to these workers. This trend has been seen in both of the case studies of Indonesia and the Philippines. Differing strategies and ideologies present among these societal institutions were revealed to be providing a degree of hurdle and consequently inhibiting their effort to coordinate.

What can be concluded here is that the centre of societal institutions' disgruntled perception on government institutions' role identification is an unsuitable process of socialisation. The vital process of norm socialisation in these governmental institutions had not been appropriately conducted as sufficient inclusion of societal identities is yet to be fully accepted in governmental policies. Such active inclusion is more visible in the case of the Philippines seen in Chapter VI. I am also inclined to suggest that the prior legacy of authoritarian politics with ambitious economic policy and little social protection has left the Indonesian governmental system with more aversion towards critical ideas and less room for the inclusion of societal institutions into the system. Feudal elitism in Indonesia has also played a part in perceiving Indonesian migrating workers as of a lower class whose welfare is not the priority of the "higher class" government.

Governmental and societal institutions in Indonesia either do not see the regional level of ASEAN as an effective level to achieve migrant workers protection policy or mention the level at all. This suggests that both groups of institutions have some doubts in the institution of ASEAN or the policy making instruments within it. Although the DFA mentions the importance of regional level foreign policy, it does not pursue protection policies for migrant workers at the ASEAN forum.

Similar to Indonesia, the migratory system of workers in the Philippines was also created by their colonial rulers. This system started from the Spanish Manila Galleon which brought Filipino workers to parts of South Americas, followed by the United States who introduced the workforce to Hawaii and the US. It portrays how the notion of migrating for work has historically grown to be a part of the Filipino tradition. Despite its authoritarian history, the workers sending system in the Philippines has long been equipped by some degree of welfare protection concerns, unlike that of Indonesia. Indonesia, on the other hand, had experienced colonial regulations for workers welfare, but is currently unable to find the right form of workers protection for their migrating workforce. The establishment of the Welfare Fund, the unification of OEDB and NSB and further the OWWA in the Philippines shows the government's recognition of the specificity of migrant workers' needs, both administratively and financially. From the discussion of Chapter V it can be concluded that such recognition has yet to be present in Indonesia.

Similar to Indonesian governmental institutions, as Chapter VI suggested, such institutions in the Philippines have also claimed to support the protection of migrant workers, as presented by their official documents and discourses. Despite these claims, there are still some identities and discourses within these institutions that do not support ideas of workers protection. The Philippine DFA has the equipment and mechanism to monitor and control their workers abroad, as well as support from the DOLE and societal institutions. The DFA's discourse equally put workers welfare abroad as their "highest priority." These facts fail to take effect as the DFA's actions towards migrant workers protection are still more reactionary than proactive. It is only when violent cases against migrant workers brought wide spread diplomatic consequences that the DFA starts to devise concrete actions. The POEA on the other hand, has a similar function to Indonesia's BNP2TKI to manage and bridge interactions between employers abroad and workers in the Philippines, ensure

employment and train workers. Within this role the protection of workers were not institutionalised other than to ensure that employment is guaranteed. It was only after 1995 that more clauses which include protection are adopted by the POEA. On the other hand, the OWWA functions as an institution that is specifically created to provide and manage welfare funds for migrant workers. The existence of an institution such as the OWWA is what differentiates the workers migration and sending system of Indonesian and the Philippines. Despite this structure and mechanism to provide financial support for workers protection, the OWWA is not without fault. The investigation in this thesis uncovered that the institution's identities and discourses remain to portray that of a trust fund instead of a proponent of workers protection. This is similar, to an extent, with the case of the Philippines DOLE. Hypothetically DOLE's identities depict protection for migrant workers through its role as the coordinating institution among other relevant institutions, and throughout the institution's official documents. Despite this fact, DOLE's discourses do not recognise the needs and conditions of migrant workers as any different to other Filipino workforce or nationals abroad. This in turn limits the understanding of the specific needs of these workers and constrains the institution from appropriately addressing migrant workers protection in its policies.

The early establishment of Filipino societal institutions and their continued existence during Marcos' rule provides the institutions with a head start in developing a more stable structure and principle in comparison to their Indonesian counterparts. Compared to societal institutions in Indonesia, such institutions in the Philippines have increasingly been more integrated into the government. Nevertheless, similar problems remain to exist at the level of societal institutions in the Philippines as with societal institutions in Indonesia. There are still issues including a lack of participation in decision making process and insufficient

coordination between the governments' decision making mechanism and societal institutions which remain to dominate relationships between these two main groups of institutions.

Societal institutions play an active role in pursuing greater protection for migrant workers and increasing valuable engagement with the government. What this thesis revealed is that these societal institutions have few distinct features present, particularly influential with regards to the development of similar institutions in Indonesia. One, the institutions perceive an identical role with regards to workers protection, which is to push the government towards a better establishment of workers protection and better show of good will; two, the work of societal institutions remain to be dampened with a lack of coordination and factionalised nature of societal institutions in the country. For the case of Philippines another dimension was also found. In pushing forward initiatives at the regional and international level, the Philippines have to get over their own issues with ASEAN level interactions. Their perception of lack of historical identity and poor economic development track record in comparison to other ASEAN members had also been responsible in dampening their effort to initiate migrant workers protection policy at the regional level. Another important feature in this investigation revolved around the strength and influence of societal institutions especially within the Philippines democratic development, especially compared to the adolescent nature of their Indonesian counterparts.

In terms of perception on ASEAN level institutionalisation, both of these groups of institutions also showed doubts that migrant workers protection can be pursued at this regional level. The DFA is the only institution which still perceives the level of ASEAN as an important venue for the country's workers protection policy, but low regional confidence drives the Philippines to refrain from initiating policies without prior initiatives from other members of the association.

### VII.3. Summary of Main Claims

Chapter III of this thesis detailed how the analysis of institutionalisation of ASEAN regional policy for migrant workers protection benefit from a framework that combines the two approaches; the two level games and sociological institutionalism approach. I argue that processes of institutionalisation at the domestic level of relevant member countries are not strong enough to face ideas unsupportive to workers protection at the regional level institutions within a context of international agreement towards a regional migrant workers protection policy. Differing ideas regarding migrant workers protection between institutions in the regional level (such as Malaysia) and those within the domestic level of Indonesia and the Philippines present a dilemma for decision makers. This means that preferences at the negotiating table do not always come into agreement and need to be continuously renegotiated. Ideas supportive to migrant workers protection need to be strongly consolidated within these preferences in order to come to an agreement towards a working protection policy. When ideas of migrant workers protection are not consolidated well enough to compete with contradicting preferences, the agreement negotiation is stalled and further renegotiation is needed. This in turn causes policy proposals to lose their strength at the regional level and fail to materialise.

Judging from the normative structures found in both governmental and societal institutions in this case it can be concluded that at the domestic and international levels, supportive identities and discourses on migrant workers protection were not consolidated sufficiently to support negotiations and formulation of a regional level migrant workers protection policy. As a result, these ideas of migrant workers protection are not lacking in force to face ideas that support the view of migrant workers as an important “commodity” with intended economic benefit for the economic development of ASEAN countries.

From the international, or in this case regional, level of the analysis, Chapter IV of the thesis revealed how identities and discourses present have not always supported migrant workers protection. Although societal institutions at the regional level, such as the ILO and Malaysian human rights groups, are supportive towards migrant workers protection, governmental institutions in the form of ASEAN and particularly the Malaysian government, have not shown sufficient support towards migrant workers protection. Despite the fact that some texts released by ASEAN portrayed appreciation towards migrant workers rights, they are considerably minimal with little or no binding measures in comparison to regulations released to govern members' economic integration. In addition, the Malaysian government's identities and discourses clearly showed unsupportive ideas towards workers rights appreciation. The Malaysian government's identification of workers migration as a national threat interrupted institutionalisation processes at the regional level, consequently making the formulation of regional policy framework for migrant workers protection in ASEAN difficult.

Within ASEAN's modern form as an intergovernmental institution, member countries individual preferences and willingness to cooperate determine the form of regulations released by the association. As a result, unsupportive ideas and thus, preferences of the Malaysian government regarding migrant workers protection were sufficient to present a substantial hurdle for the progress of an agreement towards an ASEAN policy framework for migrant workers protection. ASEAN's own discourse of consensus and non-interference worsens the progress by allowing member countries to project issues of migrant workers as a matter of national security and sensitised the issue for regional level regulation.

At the domestic level of analysis discussed in Chapter V and VI, identities and discourses which inform processes and outcomes of institutionalisation in Indonesia and the Philippines have shown more support towards the idea of migrant workers as a source of economic benefit for the developing economies. Although some institutions express



discourses that support migrant workers protection, institutionalisation in both countries is still determined by ideas of workers as sources of economic benefit. In addition, institutions with ideas supportive on migrant workers protection have continued to remain lacking in consolidation and organisation. On the other hand, national level institutionalisation within governmental institutions in Indonesia and the Philippines does not show sufficient support towards the idea of migrant workers protection at the regional level. This makes proposals for a protection policy for migrant workers coming from these two domestic level institutions difficult to relate to the conditions at the regional level and therefore difficult to be agreed in ASEAN.

Informed by the two level games, I argue that within the agreement process at the ASEAN level, negotiators from both Indonesia and the Philippines were faced with a dilemma. While on one hand, negotiators are demanded to put forward domestic level preferences towards a better migrant workers protection policy to the regional level, they are also forced to stand in front of contradicting preferences, such as that of the Malaysian governments. This means that negotiators need to renegotiate the agreement back and forth between the two levels to come up with an agreeable option. In addition, negotiators are also forced to defend institutionalisation at the domestic level which does not always appear to support ideas of migrant workers protection. This increases the burden for the negotiators who also have to work towards convincing regional level institutions of the solidity of their domestic level ideas and preferences, which include improving domestic level institutionalisation and its image at the regional level. As this involves further renegotiations with institutions at the domestic and regional level, it creates more pressures for decision makers and negotiators, and forced the agreement towards a migrant workers protection policy to stall.

Identities and discourses in both the domestic and regional level determinant to workers protection in ASEAN remains to be disjointed and in some cases contradictory for institutionalisation to take place appropriately. As these normative structures created pressure for decision makers at the ASEAN forum, it makes it hard for them to come up with a coherent policy framework to protect migrant workers in a timely manner. This inference consequently aided the conclusion that the combination of two level games and sociological institutionalism had successfully provided the thesis with a satisfactory policy analysis framework for the case study.

#### **VII.4. Further Implications of the Study**

Empirical findings in this thesis have important implications for efforts by societal and governmental institutions in Southeast Asia in formulating migrant workers protection policy. This thesis equally has significant consequences for future research in migrant workers policy and foreign policy making in general.

##### **VII.4.1. Reflections and Policy Implications**

Compared to the development in Indonesia, the Philippines government released several laws to regulate the process of workers migration and the protection of these workers, even during Marcos' authoritarian rule within the Labour Code 1974. In Indonesia, the idea of "migrant workers" appeared within the time of Suharto's presidency in the 1983/1984 Five Year Plan, but only recognised to have needed "managing" and "protecting" during the presidency of Wahid (1999-2001). The current migrant workers law in the Philippines, the Migrant Workers and Overseas Filipinos Act was released in 1995, whilst the Indonesian Law 39 on the Placement and Protection of Migrant Workers had only been released in 2004.

The Philippines government approached the regulation of migrant workers and the idea of protecting their rights several years earlier than Indonesia, indicating a higher policy priority attached by the Filipino government to migrant workers issues. The analysis in this thesis suggests that the Indonesian government should enrich their regulatory mechanisms for the placement and protection of their workers abroad. As their institutional structure is not equipped with appropriate norms of workers protection the government should socialise ideas of workers rights and better incorporate societal institutions into this decision making process.

The discourse of migrant workers as a “commodity” appears to be a prominent feature of developing governments approach to workers migration management. Despite the developmental economic vision to only treat workers migration as a temporary solution, little progress towards domestic employment growth has been made. Developing economies such as the Philippines and Indonesia have become overly dependent on remittances from their working nationals abroad to not only absorb unemployment, but also support the country’s economy. The findings in this thesis suggest that major workers sending governments need to focus on policies that keep their workforce home, in other words create enough jobs domestically to absorb unemployment. Workers sending should only be conducted for workers that are skilled and high skilled to destinations which are equipped with a human rights mechanism and abide to international labour standards.

Societal institutions play a great role in socialising ideas to governments and providing pressure for their implementation. The analysis in this thesis notes that societal institutions in Indonesia and the Philippines are still plagued with problems. The work of societal institutions to an extent is dampened with a lack of coordination and factionalised societal institutions in the country. Under-participation of societal institutions in governmental forums also means that their views are not sufficiently socialised. In order for better proposals for the

protection mechanism of migrant workers to be pursued at the regional level, a national consolidation will have to be created and maintained first.

From the analysis I can also conclude that institutions of both countries need to project a greater belief in the regional level of ASEAN as a venue for regulative mechanisms to govern migrant workers. As the interactions within ASEAN are largely intergovernmental, both Indonesia and the Philippines are equally able to utilise the economic contribution of their migrant workers to increase their bargaining position in the face of workers receiving countries. Had appropriate institutionalisation been achieved in the Indonesian and Filipino institutions both governments would be more willing to ratify International Conventions on migrant workers and workers rights in general, which will further increase the bargaining position at the regional level policy making.

## **VII. 5. Policy Challenges**

The analysis in this thesis has revealed how migrant workers protection policy has been stalled in the regional association of ASEAN. The thesis has also revealed the roles and influences of normative structures within domestic and international institutions in the making of this policy. The important contribution of this thesis, particularly for this section, is that it points out potential problems and issues in policy formulation for migrant workers protection in the region. From these revelations as well as the empirical investigation in this thesis I can sum up some recommendations on how the regional policy framework on the protection of migrant workers should take form and what it should cover. A note on the ideal process of agreement is also included.

As previously elaborated in the Theoretical Considerations within Chapter II, migrant workers protection policy presents an overlap between foreign policy and the sensitive area of domestic social policy. When the integration within a specific regional grouping has reached a relative supranationality, whereby member countries obediently yielded parts of their sovereignty to the regional authority, coming up with a regulation with such overlap may have been feasible albeit difficult. Under such conditions, the regional authority functions to provide not only imposition for its member countries to abide by these regulations, but also institutional support, financially or administratively and facilitation for the adoption of such regulations in member countries. Such supranationality or facilitative support has not been a feature present in the framework of ASEAN. Although such a degree of supranationality will be ideal for an association such as ASEAN, its member countries have not shown willingness in adhering to further integrative projects other than that in economic areas and to an extent, immigration. ASEAN's policy of consensus and non interference as seen in Chapter IV defined its member countries policy behaviour in this forum. The policy suggests that ASEAN functions as an association where decision making and policy directions remain dependent on individual member countries preferences through consensus, and member countries can still maintain their authority on national domestic issues through non-interference. This means that ASEAN integration depends highly on the willingness of its members to give consent on certain policy proposals at the ASEAN level and their allowance to be "interfered" by the association's mechanisms. The establishment of a working ASEAN policy for the protection of migrant workers subsequently requires a great deal of willingness from member countries to be regulated by the association as well as allowance for their domestic social policy to be placed under scrutiny and possibly altered.

For a coherent and working migrant workers protection policy to be established in the framework of ASEAN its member countries need to increase willingness to be regulated

under such a mechanism. The chapters in this thesis have discussed the extent to which ASEAN countries remain unwilling to comply in policy areas that are essential for the protection of migrant workers. As member countries appear reluctant in pursuing greater integration in ASEAN, the role of international bodies may need to be more present to impose members' willingness to abide by a regional migrant workers protection policy. This was particularly evident within the discussions of Chapter V and VI. Although I realise that there are literature available on the politics of this form of international enforcements, due to limited time and focus, in this section the thesis are referring to a more neutral sentiment of international enforcement. Despite this fact I acknowledge the usefulness of the interesting notion behind the politics of international enforcement and given more time shall consider the viewpoint for future research.

As chapters in this thesis show, member countries within ASEAN need to increase their willingness to incorporate ideas supportive to migrant workers protection even at the cost of economic benefit for these countries. The empirical chapters IV, V and V suggested that this perception of willingness is not easily changeable as it has become institutionalised, shown in the identities and discourses of countries' institutions. This tells the section that an ideal regional policy for the protection of migrant workers in ASEAN should allow enough adaptation of the appropriate ideas of workers protection while at the same time promote member countries adoption to such ideas and to integrate them in their policies. This means that the ideal policy should include two phases of agreement. The first phase of agreement needs to involve extensive standardisation of terminology and recognition of appropriate behaviour between member countries. In this phase, ratification of international conventions and agreements relevant to workers protection are encouraged and facilitated as well as supported by ASEAN, in case member countries came into difficulties in standardising their domestic regulations. The second phase can subsequently build on the standardisation that

has been established by further creating a regional protection policy for migrant workers. In this phase regional-specific characteristics surrounding workers migration should then be further negotiated and included in the substance of the agreement to come up with a binding regulation accepted by all member countries of ASEAN.

In the first phase towards the agreement all ASEAN member countries need to ratify UN Conventions on main aspects of workers protection including the UN Convention on the Protection of All Migrant Workers and their Families, the UN Convention against Transnational Organized Crime and the supplementary protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, ILO Conventions on Freedom of Association and Protection of the Right to Organize of 1948, Right to Organize and Collective Bargaining of 1949, Equal Remuneration of 1951, Abolition of Forced Labour of 1957, Discrimination (Employment and Occupation) of 1958 as well as the latest Convention 189 concerning decent work for domestic workers of 2011. Through these conventions, both receiving and sending countries are tied further to international authorities that entail greater consequences for noncompliance of regulations. Ideally, ASEAN needs to facilitate this whilst assuring that member countries impose similar standards to workers receiving countries. When these standards are met, policy formulation for a regional level migrant workers mechanism can be built upon the basis provided by the international standard for workers protection. Furthermore, the mechanism at the ASEAN level may serve as a regional facilitation and review board for the achievement of international standards for treatment of migrant workers. Vice versa, the regional level workers protection policy can take advantage of the international conventions to strengthen implementation to member countries.

Not only does regional policy to protect migrant workers within ASEAN need to further take into account established international conventions on the treatment of workers,

but also its substances need to be specified to the character of workers in the region. The thesis has touched upon the variety of requirements with regards to the substance of migrant workers protection policy that still needs to be met by ASEAN and its member countries. In order to include this, the policy needs to consider regulations for several main issues;

1. The policy needs to recognise the needs of different types of migrating workers, including undocumented and domestic workers as well as the distinction between male workers and female workers. As a form of recognition, the policy needs to be equipped with a principle of non-discrimination and measures to ensure that such a principle is upheld as well as consequences of its violated.
2. The policy needs to govern the equal treatment for all migrating workers by all member countries and their authorities based on the common standards previously established. This means that member countries are equally responsible to ensure that the safety and welfare protection clauses available for their own citizens are also made available for migrant workers, including improved access to social and medical services.
3. The policy needs to include clauses that guarantee member countries compliance to support improvement of employment opportunities for migrant workers in their territory as well as ameliorate workers' working and living conditions.
4. The policy needs to include regulations to tackle forced labour in any form. This would mean that member countries have to adopt measures which recognise and try to eliminate causes of forced labour including empowering and ensuring equal development for the rural and poor.
5. The policy needs to strictly establish a minimum age for admission to work in order to eliminate child labour. In order to do this the policy also has to engage member countries in managing practices of child and minors labour. In cases where minors



are working, member countries need to provide protection and ensure healthy and decent working as well as living conditions.

6. The policy needs to guarantee the freedom of affiliation and freedom of association for migrant workers as well as manage employer-worker relationship within an enterprise. In this case the policy should also include measures against employers and possibly member countries if violations of such freedoms occurred.
7. The policy requires clauses to govern member states responsibility to migrant workers from recruitment process, transport to work destination to their safe return home.
8. The policy also calls for clauses to ensure that all migrant workers are equipped with the necessary training, career guidance and promotion before they leave their countries. This should be regarded as a responsibility of both sending and receiving countries.
9. The policy ought to contain measures that allow consultation and compensation for workers for any violations that may occur as well as be able to deal with consequences for both violators and the member countries involved.
10. The policy equally requires a mechanism of checks and reviews which oversees the implementation of policies within each member countries and ensures that the standards and mechanisms for good treatments remain to be upheld by members. This may mean the establishment of an independent review commission under ASEAN.

## **VII. 6. Recommendations for Future Work**

The empirical findings of this thesis show that elements within the domestic normative structures need to be further considered in detail when investigating the outcome of migrant workers policy at the regional level. Future research on this subject should involve more investigations on how norms and values in ASEAN institutions shape and maintain their interactions with domestic level institutions and consequently influence the form of its policy outcome on social issues.

The plan for future research needs to be supported by the collection of more extensive and detailed data on ASEAN normative structures and the effect they have on both governmental and societal institutions. The aim here is to identify which normative structures have more influence in institutional interactions and the manner in which they do so. It is also essential to collect data from societal institutions at the international and national level that deal with workers rights. These data will inform the research on evidence of ASEAN influence through its normative structures. This will not only permit analysis into the regional association's interactions with societal institutions but also allow investigation into the relationship between ASEAN and other institutions, interaction modes involved and workers rights socialisation.

This research would contribute into the advancement of the study on regional workers rights policy and policy making in regional associations in general. Future research would benefit from a detailed conception of regional normative interactions and improve understanding on how regional associations influence other institutions. Understanding foreign social policy making in ASEAN, therefore is not only relevant for the analysis of regional policy but also opens new paths for the analysis of institutionalisation processes.



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## List of Interviewees and their Institutional Position

Name of Institution Interviewed	Pro/Con Migrant Workers Protection Policy	Protection in ASEAN Helpful or Not	Whose responsibility to protect	How better to protect
<b>Governmental Institutions</b>				
Indonesia: BNP2TKI	Pro	Helpful	State government, recruitment agents and workers	International enforcement to receiving countries
Department of Foreign Affairs	Pro	Helpful to an extent	State government and international organisations	International enforcement to receiving countries
Directorate for the Protection of Indonesian Citizens	Pro	Helpful	State government and international organisations	International engagement and empowerment to workers
Department of Manpower and Transmigration	Pro	Unclear	State government and workers themselves	Workers empowerment
The Philippines: Department of Foreign Affairs	Pro	Helpful	All the organisations involved, workers, government, international organisations	International involvement to force receiving countries' compliance
Office of the Undersecretary for Migrant Workers Affair	Pro	Helpful	All the organisations involved, workers, government, international organisations	Receiving countries to respect workers rights
Department of Labour and Employment	Pro	Helpful	State government, but unclear which section	Sending workers essential for economic development
POEA	Pro	Helpful	State government and workers themselves	Empowerment for workers
OWWA	Pro	Unclear	State government and international organisations	Unclear, more on managing funds
Regional Level: ILO	Pro	Helpful	State government, international organisations and recruitment agents	International ratification by sending and receiving countries



Name of Institution Interviewed	Pro/Con Migrant Workers Protection Policy	Protection in ASEAN Helpful or Not	Whose responsibility to protect	How better to protect
<b>Societal Institutions</b>				
Indonesia: National Commission on Violence Against Women	Pro	Helpful	State government, international organisations and workers	Higher priority to protect workers' rights by state government and worker empowerment
PDI-P, Partai Demokrat Indonesia-Perjuangan or the Democratic Struggle Party of Indonesia	Pro	Helpful to an extent	State government	Higher priority to protect workers' rights by state government, change of mindset and system for social protection
Migrant Care	Pro	Helpful	State government, receiving countries and international organisations	Higher government priority to protect workers' rights and more imposing role of ASEAN
PRP, Union of Working People	Pro	Not	State government	Better mindset and system of social protection
Indonesian Commission for the Disappeared and Victims of Violence	Pro	Helpful	State government and international organisations	More imposing role of ASEAN
LIPI, Indonesian Institute for Sciences	Pro	Helpful	State government and international organisations	Higher government priority to protect workers' rights and more imposing role of ASEAN
National Commission for Human Rights	Pro	Helpful	State government and international organisations	
Indonesian Women's Coalition	Pro	Helpful	State government	Higher government priority to protect workers' rights
Human Rights Working Group	Pro	Helpful	State government and international organisations	International engagement and government commitment to human rights
Consortium for Indonesian Migrant Workers Advocacy	Pro	Not	Workers themselves and receiving countries	Workers empowerment

Name of Institution Interviewed	Pro/Con Migrant Workers Protection Policy	Protection in ASEAN Helpful or Not	Whose responsibility to protect	How better to protect
APJATI, Association of Indonesian Workers Service Corporations	Con, Pro on paper	Helpful	State government	Unclear
The Philippines: Centre for Migrant Advocacy	Pro	Helpful	State government	International engagement
PhilRights	Pro	Helpful	State government and international organisations	International engagement
Migrante	Pro	Not	State government	Higher jobs creation rate nationally
Migrants Forum Asia	Pro	Helpful	State government and international organisations	Higher jobs creation, ratification of international protection mechanism
International Migrants Alliance	Pro	Helpful	State government and international organisations	International campaign and higher priority to protect workers' rights
Third World Studies Centre	Pro	Not	State government	Higher priority to protect workers' rights to workers affairs
Institute of Popular Democracy	Pro	Not	State government	Better system of domestic employment protection
National Council of Churches in the Philippines	Pro	Helpful	Workers themselves	Workers empowerment
Mission for Filipino Migrant Workers	Pro	Unclear	Workers themselves	Workers empowerment
Kalayaan	Pro	Helpful	Workers themselves	Workers empowerment